



EMERGENCY TELEPHONE USERS SURCHARGE LAW

CONTENTS

			<i>Page</i>
CHAPTER	1	GENERAL PROVISIONS AND DEFINITIONS....	7883
Section	41001	Title	7883
	41002	Construction.....	7883
	41003	“Person”	7883
	41004	“Board”	7883
	41005	“In this state”	7884
	41006	“Public agency”	7884
	41007	“Service supplier”	7884
	41008	“Month”	7884
	41009	“Service user”	7884
	41010	“Intrastate telephone communication services”	7884
	41011	“Charges for services”	7884
	41012	“Public telephone”	7885
	41013	“Surcharge”	7885
	41014	Authorization	7885
	41015	“Local telephone service”	7885
	41016	“Toll telephone service”	7886
	41016.5	“VoIP service”	7886
	41017	“Private communication service”	7886
	41018	“Communications equipment company”..	7887
	41019	Exemption	7887
	41019.5	Legislative intent for VoIP service	7887
CHAPTER	2	THE SURCHARGE	7888
Article	1	Imposition of the Surcharge	7888
Section	41020	Imposition and rate of surcharge	7888
	41021	Collection by service supplier	7891
	41022	Surcharge to be added; surcharge statement.....	7891
	41023	Surcharge collections are debts	7891
	41024	Liability for surcharge	7892
	41025	Billing of surcharge	7892
	41026	Rounding of payments.....	7892
	41027	Constitutional exemptions	7892
Article	2	Adjustment of Surcharge Rate	7892
Section	41030	Determination of rate.....	7893
	41031	Determination time	7893
	41032	Publication of rate.....	7893
Article	3	Registration	7893
Section	41040	Registration	7893
	41041	Security requirement.....	7893

CONTENTS (Contd.)

			<i>Page</i>
CHAPTER	3	SPECIAL PROVISIONS AND EXEMPTIONS	7894
Section	41045	Presumption that amount billed is correct	7894
	41046	Charges exempt under federal law	7894
	41049	Request for board ruling	7895
CHAPTER	4	DETERMINATION OF SURCHARGE	7895
Article	1	Due and Payable Dates	7895
Section	41050	Surcharge due	7895
	41051	Surcharge payable	7895
	41052	Return due	7895
	41052.1	Other than monthly returns	7896
	41053	Filing return	7896
	41054	Extensions	7896
	41055	Payment to board	7896
	41056	Records	7896
Article	1.1	Payment by Electronic Funds Transfer	7896
Section	41060	Electronic funds transfer payments	7896
	41061	Relief of penalty	7898
	41062	Definitions	7898
	41063	Electronic filing	7899
Article	3	Deficiency Determinations	7899
Section	41070	Deficiency determinations	7899
	41071	Interest	7899
	41072	Offsets	7899
	41073	10 percent penalty	7899
	41074	25 percent penalty	7900
	41075	Notice of determination	7900
	41076	Deficiency determination limitations ...	7900
	41077	Decedent deficiency determination limitations	7900
	41078	Mailing of notice	7900
Article	4	Determinations If No Return Made	7901
Section	41080	Failure to file determinations; penalty	7901
	41081	Offsets	7901
	41082	Interest	7901
	41083	25 percent penalty	7901
	41084	Notice of determination	7901
Article	5	Redeterminations	7902
Section	41085	Petition for redetermination	7902
	41086	Form, content, and amendment of petition	7902
	41087	Oral hearing	7902

CONTENTS (Contd.)

		<i>Page</i>
	41088	Decrease or increase of determination . 7902
	41089	Finality date of redetermination 7902
	41090	Due date of determination; penalty 7902
	41091	Service of notice 7902
Article	6	Interest and Penalties 7903
Section	41095	Interest and penalty 7903
	41096	Excusable delay 7903
	41097	Relief from interest; disaster 7904
	41097.5	Relief of interest 7904
	41098	Reasonable reliance on written advice; relief from tax, penalty and interest.. 7904
	41099	Relief of spouse 7905
CHAPTER	5	OVERPAYMENTS AND REFUNDS 7906
Article	1	Claim for Refund 7906
Section	41100	Credits and refunds 7906
	41101	Credit and refund limitations 7907
	41101.1	Claim limitation period; financially disabled 7907
	41101.2	Claim limitation period; overpayments from levies or liens 7908
	41102	Form and content of claim 7908
	41103	Effect of failure to file claim 7908
	41104	Notice of action on claim 7908
	41105	Interest on overpayment 7908
	41106	Disallowance of interest 7909
Article	2	Cancellations 7909
Section	41107	Cancellation of illegal determinations.. 7909
Article	3	Suit for Refund 7909
Section	41108	Enjoining collection forbidden 7909
	41109	Necessity of refund claim 7909
	41110	Refund action limitations 7910
	41111	When refund claim not acted upon 7910
	41112	Disposition of judgment 7910
	41113	Interest 7910
	41114	Judgment for assignee forbidden 7910
Article	4	Recovery of Erroneous Refunds 7910
Section	41114.1	Erroneous refunds; actions 7910
	41114.2	Place of trial 7911
	41114.3	Rules of procedure, etc 7911
CHAPTER	6	COLLECTION OF TAX 7911
Article	1	Suit for Tax 7911
Section	41115	Court action 7911

CONTENTS (Contd.)			<i>Page</i>
	41116	Rules of procedure.....	7911
	41117	Attachment.....	7911
	41118	Certificate of delinquency	7912
	41119	Service of process.....	7912
Article	2	Notice to Withhold	7912
Section	41120	Notice to holders of credits and personal property and to debtors.....	7912
	41121	Duty to hold credits, other personal property, and debts	7912
	41122	Duty to advise board; notice to bank ...	7912
	41123	Liability for transfer	7913
	41123.5	Notice of levy	7914
	41123.6	Employer withheld earnings.....	7915
Article	2.5	Priority and Lien of Surcharge.....	7916
Section	41124	Priority of claims	7916
	41124.1	Lien dates.....	7916
Article	3	Warrant for Collection.....	7916
Section	41125	Warrants	7916
	41126	Fees, commissions, and expenses.....	7917
	41127	Collection of fees, commissions, and expenses.....	7917
Article	4	Miscellaneous	7917
Section	41127.5	Furnishing of partnership agreement....	7917
	41127.6	Installment payment agreement.....	7917
	41127.7	Installment payment agreement; annual statement	7918
CHAPTER	7	ADMINISTRATION.....	7918
Article	1	Regulations, Records and Reports.....	7918
Section	41128	Enforcement by board; rulings and regulations	7918
	41129	Service supplier records	7918
	41130	Examination of records and returns	7918
	41131	Access to records of P.U.C., political subdivisions and public agencies	7919
	41132	Information confidential; tax preparer .	7919
Article	2	Disposition of Proceeds.....	7919
Section	41135	State Emergency Telephone Number Account.....	7919
	41136	Disposition of funds	7919
	41136.1	Funds held in trust for future appropriation.....	7920.1

CONTENTS (Contd.)

		<i>Page</i>
	41137	Payments to suppliers 7920.1
	41137.1	Payments to local agencies 7921
	41138	Conditions for payment 7921
	41139	Date of commencing payments 7922
	41140	Payment for previous costs 7922
	41141	Claims for payment 7922
	41142	Failure of Legislature to appropriate funds 7922
Article	2.5	Violations 7923
Section	41143	Penalty 7923
	41143.4	Felony provisions 7923
	41143.8	Prosecution 7923
Article	3	Notices 7924
Section	41144	Notices 7924
Article	4	Purpose 7924
Section	41150	Purpose 7924
	41152	Legislative intent 7924
Article	5	The California Taxpayers' Bill of Rights .. 7925
Section	41160	Administration 7925
	41161	Taxpayers' Rights Advocate 7925
	41162	Education and information program 7925
	41163	Annual hearing for taxpayer proposals 7926
	41164	Preparation of statements by board 7926
	41165	Limit on uses of revenue collected or assessed 7926
	41166	Evaluation of employee's contact with taxpayers 7926
	41167	Plan to timely resolve claims and petitions 7926
	41168	Procedures relating to review conferences 7927
	41169	Reimbursement to taxpayer 7927
	41170	Investigation for nontax administration purposes 7928
	41171	Settlement authority 7928
	41171.5	Offers in compromise 7930
	41172	Release of levy 7937
	41172.5	Return of property 7937
	41173	Exemptions from levy 7937
	41174	Claim for reimbursement of bank charges by taxpayer 7938

CONTENTS (Contd.)		<i>Page</i>
41175	Preliminary notice to taxpayer prior to lien	7938
41176	Disregard by board employee or officer	7939
Uncodified Sections		
1	Multiagency task force	7940
INDEX		7943

EMERGENCY TELEPHONE USERS SURCHARGE LAW

(Part 20, Division 2, Revenue and Taxation Code)

Enacted Statutes 1976, Chapter 443, operative July 1, 1977; amended Statutes 1977, Chapter 921; Statutes 1978, Chapters 352, 827 Statutes 1979, Chapter 906; Statutes 1980, Chapters 546, 1035. Statutes 1981, Chapters 714, 947. Statutes 1982, Chapters 5 (First Extra Session), 517, and 1589.

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|---------|----|-------------------------------------|-------------------|
| Chapter | 1. | General Provisions and Definitions. | §§ 41001–41019. |
| | 2. | The Surcharge. | §§ 41020–41041. |
| | 3. | Special Provisions and Exemptions. | §§ 41045–41049. |
| | 4. | Determination of Surcharge. | §§ 41050–41099. |
| | 5. | Overpayments and Refunds. | §§ 41100–41114.3. |
| | 6. | Collection of Tax. | §§ 41115–41127.7. |
| | 7. | Administration. | §§ 41128–41176. |

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

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| § 41001. | Title. |
| § 41002. | Construction. |
| § 41003. | “Person.” |
| § 41004. | “Board.” |
| § 41005. | “In this state.” |
| § 41006. | “Public agency.” |
| § 41007. | “Service supplier.” |
| § 41008. | “Month.” |
| § 41009. | “Service user.” |
| § 41010. | “Intrastate telephone communication services.” |
| § 41011. | “Charges for services.” |
| § 41012. | “Public telephone.” |
| § 41013. | “Surcharge.” |
| § 41014. | Authorization. |
| § 41015. | “Local telephone service.” |
| § 41016. | “Toll telephone service.” |
| § 41016.5. | “VoIP service.” |
| § 41017. | “Private communication service.” |
| § 41018. | “Communications equipment company.” |
| § 41019. | Exemption. |
| § 41019.5. | Legislative intent for VoIP service. |

41001. **Title.** This part is known and may be cited as the “Emergency Telephone Users Surcharge Act”.

41002. **Construction.** Except where the context otherwise requires, the definitions given in this chapter govern the construction of this part.

41003. **“Person.”** “Person” includes an individual, firm, partnership, joint venture, limited liability company, association, cooperative organization, fraternal organization, nonprofit organization, corporation, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee or trustee in bankruptcy.

“Person” does not include a nonprofit hospital, nonprofit educational organization, or a public agency.

History.—Stats. 1994, Ch. 1200, in effect September 30, 1994, deleted “copartnership” and added “limited liability company”.

41004. **“Board.”** “Board” means the State Board of Equalization.

7884 EMERGENCY TELEPHONE USERS SURCHARGE LAW
2009-1

41005. **“In this state.”** “In this state” means within the exterior limits of the State of California and includes all territory within those limits owned by or ceded to the United States of America.

41006. **“Public agency.”** “Public agency” means this state, and any city, county, city and county, municipal corporation, public district, or public authority located in whole or in part within this state which provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services.

41007. **“Service supplier.”** (a) “Service supplier” shall mean both of the following:

(1) Any person supplying intrastate telephone communication services to any service user in this state pursuant to California intrastate tariffs and providing access to the “911” emergency system by utilizing the digits 9-1-1.

(2) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the “911” emergency system by utilizing the digits 9-1-1.

(b) On and after January 1, 1988, “service supplier” also includes any person supplying intrastate telephone communications services for whom the Public Utilities Commission, by rule or order, modifies or eliminates the requirement for that person to prepare and file California intrastate tariffs.

History.—Stats. 1986, Ch. 1477, effective September 30, 1986, inserted “pursuant to California Intrastate tariffs” after “communication services”. Stats. 1987, Ch. 556, effective January 1, 1988, inserted “(a)” before first paragraph and added paragraph (b). Stats. 2008, Ch. 17 (SB 1040), in effect May 21, 2008, revised subdivision (a) which read, ““Service supplier” shall mean any person supplying intrastate telephone communication services pursuant to California intrastate tariffs to any service user in the state.”

41008. **“Month.”** As used in this part, “month” shall mean a calendar month.

41009. **“Service user.”** “Service user” means any person using intrastate telephone communication services or VoIP service in this state who is required to pay a surcharge under the provisions of this part.

Stats. 2008, Ch. 17 (SB 1040), in effect May 21, 2008, added “or VoIP service” after communication services”.

41010. **“Intrastate telephone communication services.”** “Intrastate telephone communication services” means all local or toll telephone services where the point or points of origin and the point or points of destination of the service are all located in this state.

41011. **“Charges for services.”** (a) “Charges for services” means all charges billed by a service supplier to a service user for intrastate telephone communications services and shall mean local telephone service and include monthly service flat-rate charges for usage, message unit charges and shall mean toll charges, and include intrastate wide area telephone service charges and also means all charges billed by a service supplier to a service user for VoIP service.

(b) (1) “Charges for services” shall not include any tax imposed by the United States or by any charter city, charges for service paid by inserting

coins in a public coin-operated telephone, and shall not apply to amounts billed to nonsubscribers for coin shortages. Where a coin-operated telephone service is furnished for a guarantee or other periodic amount, such amount is subject to the surcharge imposed by this part.

(2) “Charges for services” shall not include charges for intrastate toll calls where bills for such calls originate out of California.

(3) “Charges for services” shall not include charges for any nonrecurring, installation, service connection or one-time charge for service or directory advertising, and shall not include private communication service charges, charges for other than communications service, or any charge made by a hotel or motel for service rendered in placing calls for its guests regardless of how such hotel or motel charge is denominated or characterized by an applicable tariff of the Public Utilities Commission of this state.

(4) “Charges for services” shall not include charges for basic exchange line service for lifeline services.

History.—Stats. 2008, Ch. 17 (SB 1040), in effect May 21, 2008, lettered the former first paragraph as subdivision (a), and substituted “intrastate wide” for “intra state wide” after “, and include” and added “and also means all charges billed by a service supplier to a service user for VoIP service” after “telephone service charges” in subdivision (a); and lettered the former second, third, and fourth paragraphs as subdivision (b) (1), (2), and (3), respectively.

41012. **“Public telephone.”** “Public telephone” means any coin-operated telephone provided by the serving telephone company accessible to the public.

41013. **“Surcharge.”** “Surcharge” means a tax levied by this state.

41014. **Authorization.** Notwithstanding any other provision of law to the contrary, persons subject to the jurisdiction of the Public Utilities Commission of the State of California need not obtain an authorization from the commission to comply with the provisions of this part, nor shall such persons obtain any such authorization on behalf of any hotel or motel, in order that such entities be permitted to collect and recoup the surcharge imposed hereby upon any charge for services measured by time units or other time measurement, from their guests, in addition to any applicable tariff rates.

41015. **“Local telephone service.”** “Local telephone service” shall mean both of the following:

(a) The access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radiotelephone stations constituting a part of the local telephone system.

(b) Any facility or service provided in connection with a service described in subdivision (a).

The term “local telephone service” does not include any service which is a “toll telephone service” or a “private communication service.”

History.—Stats. 1987, Ch. 38, effective January 1, 1988, in first sentence, added “both of the following:” after “shall mean”, replaced “such” with “the” in paragraph (a) and “, and” for a period after “local telephone system,” in paragraph (b) replaced “paragraph (1)” with “subdivision (a)” and in the last sentence, replaced closing quotation mark following “private communication service” after period.

41016. **“Toll telephone service.”** “Toll telephone service” means either of the following:

(a) A telephonic quality communication that meets both of the following requirements:

(1) There is a toll charge for the service that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time, of each individual communication.

(2) The charge is paid within the United States.

(b) A service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of a predetermined amount of units or dollars of telephonic communications or an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.

History.—Stats. 2008, Ch. 17 (SB 1040), in effect May 21, 2008, revised the former subdivision (a) which read, ““Toll telephone service” shall mean (a) A telephonic quality communication for which (1) there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication and (2) the charge is paid within the United States, and”; and added “a predetermined amount of units or dollars of telephonic communications or” after “, to the privilege of” in subdivision (b).

41016.5. **“VoIP service.”** (a) “VoIP service” means any service that satisfies the requirements set forth in paragraph (1) and (2).

(1) Does all of the following:

(A) Enables real-time, two-way voice communication that originates from and terminates to the user’s location using Internet Protocol (IP) or any successor protocol.

(B) Requires a broadband connection from the user’s location.

(C) Permits users, generally, to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(2) Does at least one of the following:

(A) Requires Internet protocol-compatible customer premises equipment (CPE).

(B) When necessary, is converted to or from transmission control protocol (TCP)/IP by the service user’s service supplier before or after being switched by the public switched telephone network.

(C) Is a service that the Federal Communications Commission (FCC) has affirmatively required to provide 911 or E911 service.

(b) This definition shall only apply to this part.

History.—Added by Stats. 2008, Ch. 17 (SB 1040), in effect May 21, 2008.

41017. **“Private communication service.”** “Private communication service” shall mean

(a) The communication service furnished to a subscriber which entitles the subscriber—

(1) To exclusive or priority use of any communication channel or groups of channels, or

(2) To the use of an intercommunication system for the subscriber's stations, regardless of whether such channel, groups of channels, or intercommunication system may be connected through switching with a service described in Sections 41015 and 41016,

(b) Switching capacity, extension lines and stations, or other associated services which are provided in connection with, and are necessary or unique to the use of channels or systems described in subdivision (a), and

(c) The channel mileage which connects a telephone station located outside a local telephone system area with a central office in such local telephone system, except that such term shall not include any communication service unless a separate charge is made for such service.

41018. **“Communications equipment company.”** “Communications equipment company” shall mean a manufacturer or vendor that sells or leases communications equipment.

41019. **Exemption.** No surcharge shall be imposed on charges for any types of service or equipment furnished by a service supplier subject to state or federal public utility regulation during any period in which the same or similar services or equipment are also available for sale or lease from persons not subject to state or federal public utility regulation.

History.—Stats. 1986, Ch. 1477, effective September 30, 1986, inserted “state or federal” after “furnished by a service supplier subject to” and replaced “not subject to state or federal public utility regulation” for “other than a service supplier subject to public utility regulation.”

41019.5. **Legislative intent for VoIP service.** (a) It is the intent of the Legislature that telephone quality communication utilizing VoIP shall not be regulated by the enactment of Senate Bill 1040 of the 2007–08 Regular Session. The sole purpose of this act is to ensure that all forms of telephonic quality communications that connect to the “911” emergency system contribute to the State Emergency Telephone Number Account and that this act may not be used by a court or administrative body for any purpose other than to interpret and apply this part.

(b) For purposes of this section only, “VoIP” means any service that:

(1) Enables real-time or two-way voice communication that originates or terminates from the user’s location using IP or any successor protocol.

(2) Uses a broadband connection from the user’s location, including any service that permits users, generally, to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

History.—Added by Stats. 2008, Ch. 17 (SB 1040), in effect May 21, 2008.

CHAPTER 2. THE SURCHARGE

- Article 1. Imposition of the Surcharge. §§ 41020-41027.
2. Adjustment of Surcharge Rate. §§ 41030-41032.
3. Registration. §§ 41040-41041.

Article 1. Imposition of the Surcharge

- § 41020. Imposition and rate of surcharge.
§ 41021. Collection by service supplier.
§ 41022. Surcharge to be added; surcharge statement.
§ 41023. Surcharge collections are debts.
§ 41024. Liability for surcharge.
§ 41025. Billing of surcharge.
§ 41026. Rounding of payments.
§ 41027. Constitutional exemptions.

41020. Imposition and rate of surcharge. (a) A surcharge is hereby imposed on amounts paid by every person in the state for both of the following:

(1) Intrastate telephone communication service in this state commencing on July 1, 1977.

(2) VoIP service that provides access to the “911” emergency system by utilizing the digits 9-1-1 by any service user in this state commencing on January 1, 2009. The surcharge shall not apply to charges for VoIP service where any point of origin or destination is outside of this state.

(b) (1) Notwithstanding Section 41025, charges not subject to the surcharge may be calculated by a service supplier based upon books and records kept in the regular course of business, and, for purposes of calculating the interstate revenue portion not subject to the surcharge, a service supplier may also choose a reasonable and verifiable method from the following:

(A) Books and records kept in the regular course of business.

(B) Traffic or call pattern studies representative of the service supplier’s business within California.

(C) For VoIP service only, the VoIP safe harbor factor established by the FCC to be used to calculate the service supplier’s contribution to the federal Universal Service Fund. The FCC safe harbor factor in effect for VoIP service on September 1 of each year shall apply for the period of January 1 through December 31, inclusive, of the next succeeding calendar year for purposes of this method. At such time as the FCC establishes a safe harbor factor for the federal Universal Service Fund for VoIP service that is greater than 75 percent for interstate revenue or abolishes the safe harbor factor applicable to VoIP service, this method shall become void and of no effect, in which case a VoIP service supplier may use an alternative method approved in advance by the board, which shall be available to all VoIP service suppliers. The FCC safe harbor factor applicable to VoIP service, as described in this subparagraph, is used solely as a mechanism to calculate the charges not subject to the surcharge for VoIP service and is not necessarily reflective of the intrastate portion of VoIP service. The use of the FCC safe harbor factor

authorized by this subdivision shall not be interpreted to permit application of any intrastate requirement, other than the surcharge imposed under this part, upon VoIP service suppliers.

(2) Any method chosen by a service supplier shall remain in effect for at least one calendar year.

(3) If a service supplier reasonably relies upon books and records kept in the regular course of business or any documentation that satisfies the reasonable and verifiable method, then the service supplier's determination of the portion of the billed amount attributable to services not subject to the surcharge shall be rebuttably presumed to be correct. The service supplier's choice of books and records or other method and surcharge billing practice shall also be rebuttably presumed to be fair and legal business practices.

(4) It is the intent of the Legislature that the provisions of subparagraph (C) shall not be considered to be a precedent for the application of the surcharge or any other tax or fee where a person is required to collect a tax or fee imposed upon another.

(c) The surcharge imposed shall be at the rate of one-half of 1 percent of the charges made for such services to and including November 1, 1982, and thereafter at a rate fixed pursuant to Article 2 (commencing with Section 41030).

(d) The surcharge shall be paid by the service user as hereinafter provided.

(e) The surcharge imposed shall not apply to either of the following:

(1) In accordance with the Mobile Telecommunications Sourcing Act (Public Law 106-252), which is incorporated herein by reference, to any charges for mobile telecommunications services billed to a customer where those services are provided, or deemed provided, to a customer whose place of primary use is outside this state. Mobile telecommunications services shall be deemed provided by a customer's home service provider to the customer if those services are provided in a taxing jurisdiction to the customer, and the charges for those services are billed by or for the customer's home service provider.

(2) To any charges for VoIP service billed to a customer where those services are provided to a customer whose place of primary use of VoIP service is outside this state.

(f) For purposes of this section:

(1) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider, regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(2) "Customer" means (A) the person or entity that contracts with the home service provider for mobile telecommunications services, or with a

VoIP service provider for VoIP service, or (B) if the end user of mobile telecommunications services or VoIP service is not the contracting party, the end user of the mobile telecommunications service or VoIP service. This paragraph applies only for the purpose of determining the place of primary use. The term “customer” does not include (A) a reseller of mobile telecommunications service or VoIP communication service, or (B) a serving carrier under an arrangement to serve the mobile customer outside the home service provider’s licensed service area.

(3) “Home service provider” means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(4) “Licensed service area” means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(5) “Mobile telecommunications service” means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999.

(6) “Place of primary use” means the street address representative of where the customer’s use of the mobile telecommunications service or VoIP service primarily occurs, that must be:

(A) The residential street address or the primary business street address of the customer.

(B) With respect to mobile telecommunications service, within the licensed service area of the home service provider.

(7) (A) “Reseller” means a provider who purchases telecommunications services or VoIP service from another telecommunications service provider or VoIP service and then resells the services, or uses the services as a component part of, or integrates the purchased services into, a mobile telecommunications service or VoIP service.

(B) “Reseller” does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider’s licensed service area.

(8) “Serving carrier” means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider’s or reseller’s licensed area.

(9) “Taxing jurisdiction” means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

(10) “VoIP service provider” means that provider of VoIP service with whom the end user customer contracts for the provision of VoIP services for the customer’s own use and not for resale.

(g) The amendments made to this section by the act that added this subdivision shall become operative upon the enactment of that act, except that subdivisions (a) and (b) of this section, as amended, shall become operative on January 1, 2009.

History.—Stats. 1978, Ch. 352, effective July 4, 1978, substituted “1979” for “1978” in the second paragraph. Stats. 1979, Ch. 906, effective September 22, 1979, changed “1979” to “1982” and changed “this” following “Article 2 of” to “the”. Stats. 2001, Ch. 638 (SB 896), relettered first sentence as subdivision (a), second sentence as subdivision (b) and third sentence as subdivision (c), substituted “and thereafter at . . . with Section 41030)” for “at such a . . . the chapter thereafter.” in new subdivision (b), added new subdivisions (d) and (e) and subparagraphs (e)(1) through (e)(9) inclusive, effective January 1, 2002, but operative August 1, 2002. Stats. 2008, Ch. 17 (SB 1040), in effect May 21, 2008, added “both of the following” after “in the state for”, numbered part of subdivision (a) as paragraph (1), and added paragraph (2) to subdivision (a); added new subdivision (b); relettered former subdivisions (b) and (c) as (c) and (d), respectively; relettered former subdivision (d) as (e), added “The surcharge imposed shall not apply to either of the following: (1) after “(e)”, substituted “Public Law” for “P.L.”, deleted “the surcharge imposed under this section does not apply” after “herein by reference.”, and added paragraph (2) to the new subdivision (e); relettered former subdivision (e) as (f), added “or with a VoIP service provider for VoIP service,” after “mobile telecommunications services.”, added “or VoIP service” twice after “mobile telecommunications service”, added “or VoIP communication service” after “mobile telecommunications service” and added “mobile” after “to serve the” in the third sentence of paragraph (2) in subdivision (f); added “or VoIP service” in paragraph (6) of subdivision (f); added “With respect to mobile telecommunications service,” after “(B)” in paragraph (6) of subdivision (f); substituted “Services” for “services” after “purchases telecommunications”, added “or VoIP service” twice to subparagraph (A) in paragraph (7) of subdivision (f); added paragraph (10) to subdivision (f); and added subdivision (g).

41021. Collection by service supplier. (a) A service supplier shall collect the surcharge from each service user at the time it collects its billings from the service user, provided that the duty to collect the surcharge from a service user shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the operative date of the surcharge imposed by this part. If the stations or lines of more than one service supplier are utilized in furnishing the telephone communication services to the service user, the service supplier that bills the customer shall collect the surcharge from the customer.

(b) Only one payment under this part shall be required with respect to the surcharge on any service, notwithstanding that the lines or stations of one or more service suppliers are used in furnishing that service.

History.—Stats. 2008, Ch. 179 (SB 1498), in effect January 1, 2009, added subdivision letters (a) and (b); substituted “A” for “Every” before “service supplier shall”, deleted “,” and added “that” after “service user, provided”, and substituted “communication” for “communications” after “telephone” in new subdivision (a); and substituted “a” for “any” after “surcharge on” and substituted “that” for “such” after “furnishing” in new subdivision (b).

41022. Surcharge to be added; surcharge statement. The surcharge required to be collected by the service supplier shall be added to and stated separately in its billings to the service user.

41023. Surcharge collections are debts. The surcharge required to be collected by the service supplier, and any amount unreturned to the service user which is not a surcharge but was collected from the service user as representing a surcharge, constitute debts owed by the service supplier to this state.

A service supplier that has collected any amount of surcharge in excess of the amount of surcharge imposed by this part and actually due from a service user, may refund such amount to the service user, even though such surcharge amount has already been paid over to the board and no corresponding credit or refund has yet been secured. Any service supplier making a refund of any charge to a service user upon which surcharge is collected under this part from the service user may repay therewith the amount of the surcharge paid.

The service supplier may claim credit for such overpayment against the amount of surcharge imposed by this part which is due upon any other quarterly return, providing such credit is claimed in a return dated no later than three years from the date of overpayment.

41024. **Liability for surcharge.** Every service user in this state is liable for the surcharge until it has been paid to this state, except that payment to a service supplier registered under this part is sufficient to relieve the user from further liability for the tax.

Any surcharge collected from a service user which has not been remitted to the board shall be deemed a debt owed to the State of California by the person required to collect and remit such surcharge. Nothing in this part shall impose any obligation upon a service supplier to take any legal action to enforce the collection of the utility users surcharge imposed by this part. The service supplier shall provide the board with amounts uncollected which total three dollars (\$3) or more on a cumulative basis with respect to a single service user along with the names, addresses and reasons of the service users refusing to pay the surcharge imposed by this part.

History.—Stats. 1981, Chapter 947, in effect January 1, 1982, added “which total . . . single service user” before “along” in the third sentence of the second paragraph.

41025. **Billing of surcharge.** If a bill is rendered to persons using intrastate telephone services or VoIP service, the amount on which the surcharge with respect to such services shall be based shall be the sum of all charges for such services included in the bill; except that if the person who renders the bill groups individual items for purposes of rendering the bill and computing the surcharge then the amount on which the surcharge with respect to each such group shall be based shall be the sum of all items within that group, and the surcharge on the remaining items not included in any such group shall be based on the charge for each item separately.

History.—Stats. 2008, Ch. 17 (SB 1040), in effect May 21, 2008, added “or VoIP service,” after “intrastate telephone services”, added “,” after “computing the surcharge”, deleted commas after “shall be based” and “any such group”, respectively.

41026. **Rounding of payments.** In the payment of the surcharge imposed by this part, a fractional part of a cent shall be disregarded unless it amounts to one-half or more, in which case it shall be increased to one cent.

41027. **Constitutional exemptions.** Nothing in this part shall be construed as imposing a surcharge upon amounts paid by any person when imposition of such surcharge would be in violation of the Constitution of the United States, the United States Code, or the laws of the State of California, nor upon toll charges used in the collection and dissemination of news for the public press or on charges for wide area telephone service used by common carriers in the conduct of their business.

Article 2. Adjustment of Surcharge Rate

- § 41030. Determination of rate.
- § 41031. Determination time.
- § 41032. Publication of rate.
- § 41033. Application of rate. [Repealed.]

41030. Determination of rate. The Department of General Services shall determine annually, on or before October 1, a surcharge rate that it estimates will produce sufficient revenue to fund the current fiscal year's 911 costs. The surcharge rate shall be determined by dividing the costs (including incremental costs) the Department of General Services estimates for the current fiscal year of 911 plans approved pursuant to Section 53115 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services and VoIP service to which the surcharge will apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year, but in no event shall such surcharge rate in any year be greater than three-quarters of 1 percent nor less than one-half of 1 percent.

History.—Stats. 1978, Ch. 352, effective July 4, 1978, in the first sentence substituted “1979–80” for “1978–79”. Stats. 1979, Ch. 906, effective September 22, 1979, changed “1979–80” to “1982–83”. Stats. 1980, Ch. 1035, operative January 1, 1981, completely reworded the section. Stats. 2007, Ch. 342 (AB 1748), in effect January 1, 2008, substituted “October” for “September” and substituted “January 1 to December 31” for “November 1 of the current calendar year to October 31”. Stats. 2008, Ch. 17 (SB 1040), in effect May 21, 2008, added “and VoIP service” after “intrastate telephone communications services” and added “, inclusive,” after “December 31”.

41031. Determination time. The Department of General Services shall make its determination of such surcharge rate each year no later than October 1 and shall notify the board of the new rate, which shall be fixed by the board to be effective with respect to charges made for intrastate telephone communication services and VoIP service on or after January 1 of the next succeeding calendar year.

History.—Stats. 1980, Ch. 1035, operative January 1, 1981, substituted “The Department of General Services” for “The board”, substituted “notify the board of” for “fix”, added a comma following “new rate” and substituted present wording following “shall be” for “effective as provided in Section 41033”. Stats. 2007, Ch. 342 (AB 1748), in effect January 1, 2008, substituted “October” for “September”, substituted “January” for “November” and substituted “the next succeeding calendar year” for “each year”. Stats. 2008, Ch. 17 (SB 1040), in effect May 21, 2008, added “and VoIP service” after “intrastate telephone communication services”.

41032. Publication of rate. Immediately upon notification by the Department of General Services and fixing the surcharge rate, the board shall each year no later than November 15 publish in its minutes the new rate, and it shall notify by mail every service supplier registered with it of the new rate.

History.—Stats. 1980, Ch. 1035, operative January 1, 1981, substituted “notification by the Department of General Services” for “making its determination” and substituted “15” for “1”. Stats. 2007, Ch. 342 (AB 1748), in effect January 1, 2008, substituted “November” for “September”.

41033. Application of rate. [Repealed by Stats. 1980, Ch. 1035, operative January 1, 1981.]

Article 3. Registration

§ 41040. Registration.

§ 41041. Security requirement.

41040. Registration. Every service supplier in this state shall register with the board upon a form prescribed by the board and shall set forth the name under which it transacts or intends to transact business and such other information as the board may require.

41041. Security requirement. (a) When necessary to ensure compliance with this part, the board may require any person subject to this

part to place with it the security that the board determines. Security in the form of cash, insured deposits in banks or savings and loan institutions, or a bond or bonds duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful performance of all of the requirements of this part and expressly providing for the payment of all taxes, penalties, and other obligations of the person arising out of this part, shall be held in trust to be used solely in the manner provided by this section. The amount of security shall be fixed by the board, not to exceed twice the estimated average quarterly liability of persons filing for quarterly periods, or three times the estimated average monthly liability of persons filing for monthly periods, determined in the manner that the board deems proper. Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax due to the state under this part or any amount of tax required to be collected and paid to the state within the time required.

(b) If, when a person discontinues business, the board holds security pursuant to this section in the form of cash or insured deposits in banks or savings and loan institutions, the security when applied to the account of the taxpayer shall be deemed a payment on any liability of the person to the board on the date the business is discontinued.

(c) This section shall not apply to a taxpayer who either has timely filed all returns and paid all tax due to the state under this part for the three consecutive years prior to the effective date of this section, or has, on or before July 31, 1998, timely filed all returns and paid all tax due to the state under this part since the taxpayer registered with the board pursuant to Section 41040. However, the board may require security from any such taxpayer who fails to remain in compliance with the reporting and payment requirements of this part subsequent to the effective date of this section.

History.—Added by Stats. 1998, Ch. 649 (AB 911), in effect January 1, 1999.

CHAPTER 3. SPECIAL PROVISIONS AND EXEMPTIONS

§ 41045. Presumption that amount billed is correct.

§ 41046. Charges exempt under federal law.

§ 41049. Request for board ruling.

41045. Presumption that amount billed is correct. The surcharges imposed by this part shall be collected insofar as practicable at the same time as, and along with, the charges made in accordance with regular billing practice of the service supplier.

The charges for services determined by or stated on a billing of a service supplier in accordance with its business practices and accounting records to have been supplied to a service user during any calendar month or billing period of the service supplier shall be presumed to be correct. The presumption may be rebutted by evidence which establishes that the charges for services were other than such amount.

41046. Charges exempt under federal law. There are exempt from the surcharge charges for intrastate telephone communication services and

VoIP service which are exempt from the federal communication services tax pursuant to Section 4253 of the Internal Revenue Code of 1954.

History.—Stats. 2008, Ch. 17 (SB 1040), in effect May 21, 2008, added “and VoIP service” after “intrastate telephone communication services”.

41049. Request for board ruling. In any instances where an exemption is claimed by reason of the provisions of this part, and the service supplier questions the validity of the claimed exemption, either the service supplier or the service user may request the board to issue a ruling as to the validity of the claimed exemption, accompanying the request with a statement showing the facts and basis for the claim. The board shall issue its ruling within 30 days of receipt of the request. Pending issuance of the ruling, the service supplier shall not be obligated to collect the surcharge from the claimant.

CHAPTER 4. DETERMINATION OF SURCHARGE

- Article 1. Due and Payable Dates. §§ 41050–41056.
- 1.1. Payment by Electronic Funds Transfer. §§ 41060–41063.
 3. Deficiency Determinations. §§ 41070–41078.
 4. Determinations of No Return Made. §§ 41080–41084.
 5. Redeterminations. §§ 41085–41091.
 6. Interest and Penalties. §§ 41095–41098.

Article 1. Due and Payable Dates

- § 41050. Surcharge due.
§ 41051. Surcharge payable.
§ 41052. Return due.
§ 41052.1. Other than monthly returns.
§ 41053. Filing return.
§ 41054. Extensions.
§ 41055. Payment to board.
§ 41056. Records.

41050. Surcharge due. The surcharge imposed by Section 41020 attaches at the time charges for the intrastate telephone communication services and VoIP service are billed by the service supplier to the service user and shall be paid by the service user when paying for such services.

History.—Stats. 2008, Ch. 17 (SB 1040), in effect May 21, 2008, added “charges for” after “at the time” and added “and VoIP service” after “intrastate telephone communication services”.

41051. Surcharge payable. The surcharges imposed by this part and the amounts thereof required to be collected are due monthly, and the amount of surcharge collected in one calendar month by the service supplier shall be remitted to the board on or before the last day of the second month following the month in which the surcharges were collected. However, the fourth quarter collection for the 1996 calendar year shall be remitted no later than February 15, 1997.

History.—Added by Stats. 1976, Ch. 443, effective July 10, 1976. Stats. 1980, Ch. 676, effective January 1, 1981, added “and” after “quarterly”; Stats. 1985, Ch. 591, effective January 1, 1986, substituted “the last day . . . following” for “60 days after the close of.” Stats. 1996, Ch. 432, in effect January 1, 1997, substituted “monthly” for “quarterly” after “collected are due”, substituted “month” for “quarter” after “in one calendar”, substituted “on or before” for “no later than” after “to the board”, and substituted “the month in . . . February 15, 1997” for “a calendar quarter”.

41052. Return due. On or before the last day of the second month following each month in which the surcharges were collected, a return for that month shall be filed with the board in the form as prescribed by the

board, which may include, but not be limited to, electronic media. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

The service supplier shall include a list of any service users who have refused to pay a cumulative total of three dollars (\$3) or more of the surcharge imposed by this part with each return filing.

History.—Stats. 1981, Ch. 947, in effect January 1, 1981, substituted “who have refused” for “refusing” before, and added “a cumulative total of three dollars (\$3) or more of” after, “to pay” in the second paragraph. Stats. 1985, Ch. 591, effective January 1, 1986, substituted “last” for “60th”, added “of the second month” after “day”, and deleted “following” after “quarter” in the first paragraph. Stats. 1996, Ch. 432, in effect January 1, 1997, deleted “December 1, 1978, and” after “On or before” and substituted “following each month . . . for that month” for “of each calendar quarter, a return for the preceding quarter” in the first paragraph, and substituted “shall” for “will” after “The service supplier, in the second paragraph. Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, substituted “in the form . . . electronic media” for “in such form as the board may prescribe” after “filed with the board” and added the second sentence to the first paragraph.

41052.1. Other than monthly returns. If the board deems it necessary in order to ensure payment or to facilitate the collection by the state of the amount of taxes, the board may require returns and payment of the amount of surcharges for a calendar quarter or calendar year period.

History.—Added by Stats. 1996, Ch. 1087, in effect January 1, 1997. Stats. 1998, Ch. 350 (SB 2231), in effect January 1, 1999, substituted “the board” for “it” after “If”, added “the” after “or to facilitate”, and substituted “surcharges for a . . . calendar year period” for “taxes for quarterly periods other than calendar quarters, or for multiples of quarterly periods” after “the amount of”.

41053. Filing return. The person required to file the return shall deliver the return together with a remittance of the amount of the surcharge payable to the office of the board.

41054. Extensions. The board for good cause may extend not to exceed one month the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.

41055. Payment to board. All amounts required to be paid to the state under this part shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California.

41056. Records. The service supplier shall maintain such records as may be necessary to determine the amount of surcharge collected under provisions of this part. Those records shall be maintained for a period of four years from the time the surcharge is due.

History.—Stats. 1987, Ch. 38, effective January 1, 1988, in second sentence replaced “Such” with “Those” and “three” with “four”.

Article 1.1. Payment by Electronic Funds Transfer

- § 41060. Electronic funds transfer payments.
- § 41061. Relief of penalty.
- § 41062. Definitions.
- § 41063. Electronic filing.

41060. Electronic funds transfer payments. (a) Any person whose estimated surcharge liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated surcharge liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 41050). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting surcharges by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of the surcharges with respect to the period for which the return is required.

(e) Any person required to remit surcharges pursuant to this article who remits those surcharges by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the surcharges incorrectly remitted.

(f) Any person who fails to pay any surcharge to the state or any amount of surcharge required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 41070) or Article 4 (commencing with Section 41080), within the time required shall pay a penalty of 10 percent of the surcharge or amount of surcharge, in addition to the surcharge or amount of surcharge, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the surcharge or the amount of surcharge required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated surcharge liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the surcharges due for any one return. Any person remitting surcharges by electronic funds transfer shall be subject to the penalties under this section and not Section 41095.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

History.—Added by Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001. Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, operative January 1, 2006, deleted the former last sentence of subdivision (b) which provided "The election shall be operative for a minimum of one year."

41061. **Relief of penalty.** If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 41060. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Added by Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001.

41062. **Definitions.** (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) "Automated clearinghouse" means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of the surcharge. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) "Fedwire transfer" means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 41060 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

History.—Added by Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001.

41063. **Electronic filing.** (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

History.—Added by Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003.

Article 3. Deficiency Determinations

- § 41070. Deficiency determinations.
- § 41071. Interest.
- § 41072. Offsets.
- § 41073. 10 percent penalty.
- § 41074. 25 percent penalty.
- § 41075. Notice of determination.
- § 41076. Deficiency determination limitations.
- § 41077. Decedent deficiency determination limitations.
- § 41078. Mailing of notice.

41070. **Deficiency determinations.** If the board is not satisfied with return or returns of the surcharge or the amount of surcharge required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount payable for one or for more than one period.

41071. **Interest.** The amount of the determination, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the day specified pursuant to Section 41051 for which the amount or any portion thereof should have been returned until the date of payment.

History.—Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from.” Stats. 1984, Ch. 1020, operative July 1, 1985, added “modified” before “adjusted,” deleted “annual” before “rate,” added “per month, or fraction thereof,” before “established” and substituted “Section 6591.5, . . . period” for “Section 19269 . . . month” before “for.” Stats. 1985, Ch. 591, effective January 1, 1986, deleted “60th” after “from the,” deleted “following” after “day,” substituted “specified . . . 41051” for “the quarterly period” after “following”.

41072. **Offsets.** In making a determination the board may offset overpayments for another period or periods, against underpayments for another period or periods, against penalties, and against the interest on the underpayments.

41073. **10 percent penalty.** If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the amount of the determination or ten dollars (\$10), whichever is greater, shall be added thereto.

41074. **25 percent penalty.** If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade this part or authorized rules and regulations, a penalty of 25 percent of the amount of the determination or twenty-five dollars (\$25), whichever is greater, shall be added thereto.

41075. **Notice of determination.** The board shall give to the service supplier or service user written notice of its determination. The notice shall be placed in a sealed envelope with postage paid addressed to the service supplier or service user at his address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in the United States post office or facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

History.—Stats. 1980, Ch. 546, operative January 1, 1981, deleted “The notice shall be sent either certified or registered mail.” following second sentence.

41076. **Deficiency determination limitations.** Except in the case of fraud, intent to evade this part or authorized rules and regulations, or failure to make a return every notice of a deficiency determination shall be mailed within three years after the last day of the second calendar month following the month for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed within eight years after the last day of the second calendar month following the month for which the amount is proposed to be determined.

History.—Added by Stats. 1976, Ch. 443, effective January 1, 1977. Stats. 1985, Ch. 591, effective January 1, 1986, added “second” after “day of the” in the first sentence and added “second” after “day of the” in the second sentence. Stats. 1996, Ch. 432, in effect January 1, 1997, substituted “month” for “quarterly period” after “month following the” in the first sentence.

41077. **Decedent deficiency determination limitations.** In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the tax or any portion thereof.

41078. **Mailing of notice.** If before the expiration of the time prescribed in Section 41076 for the mailing of a notice of deficiency determination, the taxpayer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

History.—Added by Stats. 1985, Ch. 591, effective January 1, 1986.

Article 4. Determinations If No Return Made

- § 41080. Failure to file determinations; penalty.
- § 41081. Offsets.
- § 41082. Interest.
- § 41083. 25 percent penalty.
- § 41084. Notice of determination.

41080. Failure to file determinations; penalty. If any person fails to make a return, the board shall make an estimate of the amount of the charges for services by the person, or, as the case may be of the amount of charges for services received by the persons, in this state which are subject to the surcharge. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the board's possession or may come into its possession. Upon the basis of this estimate the board shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 10 percent thereof, or ten dollars (\$10), whichever is greater. One or more determinations may be made for one or for more than one period.

History.—Stats. 1981, Ch. 714, in effect January 1, 1982, substituted "into" for "in" after "come" in the second sentence.

41081. Offsets. In making a determination the board may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments.

41082. Interest. The amount of the determination, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the day specified pursuant to Section 41051 for which the amount or any portion thereof should have been returned until the date of payment.

History.—Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted "adjusted . . . 19269" for "rate . . . thereof" before "from." Stats. 1984, Ch. 1020, operative July 1, 1985, added "modified" before "adjusted," deleted "annual" before "rate," added "per month, or fraction thereof," before "established" and substituted "Section 6591.5, . . . period" for "Section 19269 . . . month" before "for." Stats. 1985, Ch. 591, effective January 1, 1986, deleted "60th" after "from the," substituted "specified . . . 41051" for "following . . . period".

41083. 25 percent penalty. If the failure of any person to file a return is due to fraud or an intent to evade this part or rules and regulations, a penalty of 25 percent of the amount required to be paid by the person, exclusive of penalties, or twenty-five dollars (\$25), whichever is greater, shall be added thereto in addition to the penalty provided in Section 41080.

41084. Notice of determination. Promptly after making its determination the board shall give to the person written notice of the estimate, determination, and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Article 5. Redeterminations

- § 41085. Petition for redetermination.
- § 41086. Form, content, and amendment of petition.
- § 41087. Oral hearing.
- § 41088. Decrease or increase of determination.
- § 41089. Finality date of redetermination.
- § 41090. Due date of determination; penalty.
- § 41091. Service of notice.

41085. Petition for redetermination. Any person against whom a determination is made under Article 3 or 4 of this chapter may petition for a redetermination within 30 days after service upon the person of notice thereof. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the period.

41086. Form, content, and amendment of petition. Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for redetermination.

41087. Oral hearing. If a petition for redetermination is filed within the 30-day period, the board shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him 10 days' written notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

41088. Decrease or increase of determination. The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the penalty imposed by Section 41074 or Section 41080 applies to the amount of the determination as originally made or as increased, the claim for increase must be asserted within eight years after the last day of the second calendar month following the month for which the increase is asserted.

History.—Added by Stats. 1976, Ch. 443, effective January 1, 1977. Stats. 1985, Ch. 591, effective January 1, 1986, added "second" after "day of the" in second sentence. Stats. 1996, Ch. 432, in effect January 1, 1997, substituted "month" for "quarterly period" after "month following the" in the second sentence.

41089. Finality date of redetermination. The order or decision of the board upon a petition for redetermination becomes final 30 days after service upon the petitioner of notice thereof.

41090. Due date of determination; penalty. All determinations made by the board under Article 3 or 4 of this chapter are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties or ten dollars (\$10), whichever is greater, shall be added thereto.

41091. Service of notice. Any notice required by this article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Article 6. Interest and Penalties

- § 41095. Interest and penalty.
- § 41096. Excusable delay.
- § 41097. Relief from interest; disaster.
- § 41097.5. Relief of interest.
- § 41098. Penalty interest rates. [Repealed.]
- § 41098. Reasonable reliance on written advice; relief from tax, penalty and interest.
- § 41099. Relief of spouse.

41095. **Interest and penalty.** (a) Any person who fails to pay any surcharge to the state or any amount of surcharge required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 41070) or Article 4 (commencing with Section 41080), within the time required shall pay a penalty of 10 percent of the surcharge or amount of the surcharge or ten dollars (\$10), whichever is greater, in addition to the surcharge or amount of surcharge, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the surcharge or the amount of surcharge required to be collected became due and payable to the state until the date of payment.

(b) Any person who fails to file a return in accordance with the due date set forth in Section 41052 or the due date established by the board in accordance with Section 41052.1, shall pay a penalty of 10 percent of the amount of the surcharge with respect to the period for which the return is required, or ten dollars (\$10), whichever is greater.

(c) The penalties imposed by this section shall be limited to either 10 percent of the surcharge for which the return is required for any one return, or ten dollars (\$10), whichever is greater.

History.—Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from.” Stats. 1984, Ch. 1020, operative July 1, 1985, deleted “of this chapter,” after “Section 41080,” added “modified” before “adjusted,” deleted “annual” before “rate,” added “per month, or fraction thereof,” before “established” and substituted “Section 6591.5,” for “Section 19269.” Stats. 2000, Ch. 923 (AB 2898), effective January 1, 2001, substituted “surcharge” for “tax” in subdivision (a), added subdivision (b) and (c).

41096. **Excusable delay.** (a) If the board finds that a person’s failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 41060, 41080, 41090, and 41095.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, added “, 41090,” after “by Section 41080” in the first paragraph; and added “or she” after “the which he” and added “or her” after “bases his” in the second paragraph. Stats. 2000, Ch. 1052 (AB 2898), effective January 1, 2001, renumbered first sentence as subdivision (a), added “41060,” after “provided by Sections” in subdivision (a), renumbered second sentence as subdivision (b), added “Except as provided in subdivision (c),” before “any person seeking” in subdivision (b), added subdivision (c).

41097. **Relief from interest; disaster.** If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 41054, 41060, 41082, and 41095.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Added by Stats. 1981, Ch. 947, in effect January 1, 1982. Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001, added "41060" after "by Sections 41054," of first sentence, added "or she" after "upon which he" of second sentence, added "or her" after "bases his" of second sentence.

41097.5. **Relief of interest.** (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2001, Ch. 251 (AB 1123), substituted "this part" for "Section 41082 and 41095" in subdivision (a), effective January 1, 2002.

41098. **Penalty interest rates.** [Repealed by Stats. 1985, Ch. 20, effective July 1, 1985.]

41098. **Reasonable reliance on written advice; relief from tax, penalty and interest.** (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the surcharge imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to the surcharge under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to the surcharge, or stating the conditions under which the activity or transaction is subject to the surcharge.

(3) The liability for surcharges applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

History.—Added by Stats. 1990, Ch. 987, in effect January 1, 1991.

41099. **Relief of spouse.** (a) Under regulations prescribed by the board, if:

(1) A surcharge liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of surcharge liability is attributable to one spouse; or any amount of the surcharge reported on a return was unpaid and the nonpayment of the reported surcharge liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in surcharge attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the surcharge, including interest, penalties, and other amounts, to the extent that the liability is attributable to that understatement or nonpayment of the surcharge.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months, quarters, or years subject to the provisions of this part, but shall not apply to a calendar month, quarter, or year that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), “reason to know” means whether a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as a service supplier of intrastate telephone communication services to service users or as a user of intrastate telephone communication services to which the understatement is attributable. If neither spouse rendered substantial services as a service supplier or as a service user, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for an unpaid surcharge or deficiency, or any portion of either, attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to January 1, 2008.

History.—Added by Stats. 2007, Ch. 342 (AB 1748), in effect January 1, 2008. Stats. 2008, Ch. 179 (SB 1498), in effect January 1, 2009, deleted “or not” after “account whether” and substituted commas for parentheses around the phrase “including interest, penalties, and other amounts” in paragraph (3) of subdivision (a); substituted “a” for “any” after “shall not apply to” in subdivision (c); deleted “or not” after “means whether” in subdivision (d); substituted “communication” for “communications” after “intrastate telephone” in subdivision (e); substituted “an” for “any” after “spouse liable for”; deleted “any” after “unpaid surcharge or”, and substituted commas for parentheses around the phrase “or any portion of either” in subdivision (f); and substituted “January 1, 2008” for “the effective date of this section” in subdivision (h).

CHAPTER 5. OVERPAYMENTS AND REFUNDS

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|---------|----|--------------------------------|---------------------|
| Article | 1. | Claim for Refund. | §§ 41100–41106. |
| | 2. | Cancellations. | § 41107. |
| | 3. | Suit for Refund. | §§ 41108–41114. |
| | 4. | Recovery of Erroneous Refunds. | §§ 41114.1–41114.3. |

Article 1. Claim for Refund

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| § 41100. | Credits and refunds. |
| § 41101. | Credit and refund limitations. |
| § 41101.1. | Claim limitation period; financially disabled. |
| § 41101.2. | Claim limitation period; overpayments from levies or liens. |
| § 41102. | Form and content of claim. |
| § 41103. | Effect of failure to file claim. |
| § 41104. | Notice of action on claim. |
| § 41105. | Interest on overpayment. |
| § 41106. | Disallowance of interest. |

41100. Credits and refunds. If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or

illegally collected or computed, the board shall set forth that fact in the records of the board, certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid, and credit the excess amount collected or paid on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

Any overpayment of the surcharge by a service user to a service supplier who is required to collect the surcharge shall be credited or refunded by the state to the service user. However, if the service supplier has paid the amount to the board and establishes to the satisfaction of the board that it has not collected the amount from the service user or has refunded the amount to the service user, the overpayment may be credited or refunded by the state to the service supplier.

History.—Stats. 1977, Ch. 921, effective January 1, 1978, deleted “one thousand dollars (\$1,000)” in paragraph two and substituted “five thousand (\$5,000)”. Stats. 1985, Ch. 591, effective January 1, 1986, substitutes “fifteen thousand dollars (\$15,000)” for “five thousand dollars (\$5,000)” in the second paragraph. Stats. 1988, Ch. 1029, in effect January 1, 1989, added “or her” before “successors” in the first and second paragraphs and substituted “fifty thousand dollars (\$50,000)” for “fifteen thousand dollars (\$15,000)” in the second paragraph. Stats. 1994, Ch. 726, in effect September 22, 1994, substituted “, certify the amount ... or paid and credit” for “and shall certify to the State Board of Control the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. If approved by the State Board of Control the excess amount collected or paid shall be credited by the board” after “records of the board”; added “Any proposed determination ... of that determination” as the second sentence; deleted the second paragraph which read: “In the case, however, of a determination by the board that an amount not exceeding fifty thousand dollars (\$50,000) was not required to be paid under this part, the board without obtaining the approval of the State Board of Control may credit the amount on any amounts then due and payable under this part from the person by whom the amount was paid and may refund the balance to the person or his or her successors, administrators, or executors.” in the first paragraph; and substituted “. However,” for “; provided however, that” after “the service user” in the second paragraph.

41101. Credit and refund limitations. No refund shall be approved by the board after three years from the last day of the second month following the close of the month for which the overpayment was made, or, with respect to determinations made under Article 3 or 4 of Chapter 4 of this part, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires the later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period unless a claim for credit is filed with the board within that period.

History.—Added by Stats. 1976, Ch. 443, effective January 1, 1977. Stats. 1985, Ch. 591, effective January 1, 1986, added “second” after “day of the” in the first sentence. Stats. 1996, Ch. 432, in effect January 1, 1997, substituted “month” for “quarterly period” after “close of the” and substituted “that” for “such” after “the board within” in the first sentence, and substituted “that” for “such” after “the expiration of” and after “the board within” in the second sentence.

41101.1. Claim limitation period; financially disabled. (a) The limitation period specified in Section 41101 shall be suspended during any period of a person’s life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to

last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation of rule of law, including res judicata, as of the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

41101.2. Claim limitation period; overpayments from levies or liens. Notwithstanding Section 41101, a refund of an overpayment of any surcharge, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

History.—Added by Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007.

41102. Form and content of claim. Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

41103. Effect of failure to file claim. Failure to file a claim within the time prescribed in this article constitutes a waiver of any demand against the state on account of overpayment.

41104. Notice of action on claim. Within 30 days after disallowing any claim in whole or in part the board shall give notice of its action to the claimant in the manner prescribed for service of notice of a deficiency determination.

41105. Interest on overpayment. Interest shall be paid upon any overpayment of any amount of tax at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the calendar month following the month during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the surcharge or amount against which the credit is applied.

History.—Stats. 1978, Ch. 827, effective January 1, 1979, deleted “last day of the calendar month” and substituted “date the return is due” following “from the” in the first sentence. Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . month” before “from” in the first paragraph. Stats. 1984, Ch. 1020, operative July 1, 1984, added “modified” before “adjusted”, deleted “annual” before “rate”, added “per month” before “established”, substituted “Section 6591.5” for “Section 19269”, added “or she” before “has” in (a). Stats. 1992, Ch. 1336, in effect January 1, 1993, substituted “first day . . . In addition, a” for “date the return is due following the quarterly period for which the overpayment was made; but no” in the first sentence of the first paragraph.

41106. Disallowance of interest. (a) If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

History.—Stats. 1998, Ch. 420 (SB 2230), in effect January 1, 1999, added subdivision designation “(a)” and added subdivision (b).

Article 2. Cancellations

§ 41107. Cancellation of illegal determinations.

41107. Cancellation of illegal determinations. If any amount has been illegally determined either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1977, Ch. 921, effective January 1, 1978, substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)” in the first and last sentences. Stats. 1985, Ch. 591, effective January 1, 1986, substituted “fifteen thousand dollars (\$15,000)” for “five thousand dollars” in sentence 1 and sentence 3. Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted “fifty thousand dollars (\$50,000)” for “fifteen thousand dollars (\$15,000)” in sentence 1 and sentence 3. Stats. 1994, Ch. 726, in effect September 22, 1994, deleted “in excess of fifty thousand dollars (\$50,000)” after “if any amount”; substituted a comma for “and” after “in its records”; deleted “to the State Board of Control” after “certify”; substituted “and” for “.”. If the State Board of Control approves, it shall” after “determination was made”; and substituted “Any proposed determination . . . of that determination” for “If an amount not exceeding fifty thousand dollars (\$50,000) has been illegally determined either by the person filing a return or by the board, the board without certifying this fact to the State Board of Control shall authorize the cancellation of the amount upon the records of the board.”

Article 3. Suit for Refund

- § 41108. Enjoining collection forbidden.
- § 41109. Necessity of refund claim.
- § 41110. Refund action limitations.
- § 41111. When refund claim not acted upon.
- § 41112. Disposition of judgment.
- § 41113. Interest.
- § 41114. Judgment for assignee forbidden.

41108. Enjoining collection forbidden. No injunction, or writ of mandate, judgment of declaratory relief, or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the state or against any officer of the state to prevent or enjoin the collection under this part of any tax or any amount of tax required to be collected.

41109. Necessity of refund claim. No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been

erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed pursuant to Article 1 of this chapter.

41110. **Refund action limitations.** Within 90 days after the mailing of the notice of the board's action upon a claim filed pursuant to Article 1 of this chapter, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in any city or city and county of this state in which the Attorney General has an office for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

41111. **When refund claim not acted upon.** If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board of its action on the claim, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

41112. **Disposition of judgment.** If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any surcharge due and payable from the plaintiff. The balance of the judgment shall be refunded to the plaintiff.

41113. **Interest.** In any judgment, interest shall be allowed at the modified adjusted rate per annum established pursuant to Section 6591.5, upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

History.—Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . annum” before “upon.” Stats. 1984, Ch. 1020, operative July 1, 1985, added “modified” before “adjusted,” deleted “annual” before “rate,” substituted “per annum” for “established” before “pursuant,” substituted “Section 6591.5” for “Section 19269”.

41114. **Judgment for assignee forbidden.** A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

Article 4. Recovery of Erroneous Refunds *

§ 41114.1. Erroneous refunds; actions.

§ 41114.2. Place of trial.

§ 41114.3. Rules of procedure, etc.

41114.1. **Erroneous refunds; actions.** (a) The board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

* Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 3 (commencing with Section 41070) of Chapter 4. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

41114.2. **Place of trial.** In any action brought pursuant to subdivision (a) of Section 41114.1, the court may, with the consent of the Attorney General, order a change in the place of trial.

41114.3. **Rules of procedure, etc.** The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 41114.1, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

Note.—Sec. 61, of Stats. 1998, Ch. 609 SB 2232), effective January 1, 1999, states: It is the intent of the Legislature in enacting those provisions of this act that allow the State Board of Equalization to recover refunds administratively that no increase in taxpayer costs result from taxpayer compliance with these provisions.

CHAPTER 6. COLLECTION OF TAX

- Article 1. Suit for Tax. §§41115-41119.
- 2. Notice to Withhold. §§41120-41123.6.
- 2.5. Priority and Lien of Surcharge. §§41124-41124.1.
- 3. Warrant for Collection. §§41125-41127.
- 4. Miscellaneous. §§41127.5-41127.7.

Article 1. Suit for Tax

- §41115. Court action.
- §41116. Rules of procedure.
- §41117. Attachment.
- §41118. Certificate of delinquency.
- §41119. Service of process.

41115. **Court action.** At any time within 10 years after any tax or any amount of tax required to be collected becomes due and payable, and at any time after any amount determined under Article 3 (commencing with Section 41070), Article 4 (commencing with Section 41080) or Article 5 (commencing with Section 41085) of Chapter 4 of this part becomes due and payable, the board may bring an action in the courts of this state, of any other state, or of the United States in the name of the people of California to collect the amount delinquent together with penalties.

41116. **Rules of procedure.** The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals are applicable to the proceedings.

41117. **Attachment.** In the action a writ of attachment may issue, and no affidavit previous to the issuing of the attachment is required.

History.—Stats. 1982, Ch. 517, in effect January 1, 1983, deleted "bond or" before "affidavit."

41118. **Certificate of delinquency.** In the action a certificate by the board showing the delinquency shall be prima facie evidence of the determination of the surcharge or the amount of surcharge, of the delinquency of the amounts set forth, and of the compliance by the board with all the provisions of this part in relation to the computation and determination of the amounts.

41119. **Service of process.** In any action brought under this part process may be served according to the Code of Civil Procedure and the Civil Code of this state or may be served upon any agent or clerk in this state employed by a service supplier in a place of business maintained by the service supplier in this state. In the latter case a copy of the process shall forthwith be sent by registered mail to the service supplier at its principal or home office.

Article 2. Notice to Withhold

- § 41120. Notice to holders of credits and personal property and to debtors.
- § 41121. Duty to hold credits, other personal property, and debts.
- § 41122. Duty to advise board; notice to bank.
- § 41123. Liability for transfer.
- § 41123.5. Notice of levy.
- § 41123.6. Employer withheld earnings.

41120. **Notice to holders of credits and personal property and to debtors.** If any person is delinquent in the payment of the amount required to be paid by him or her or if a determination has been made against him or her that remains unpaid, the board may, not later than five years after the payment became delinquent, give notice thereof personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the delinquent, or any person against whom a determination has been made that remains unpaid or owing any debts to the delinquent or that person. In the case of any state officer, department or agency, the notice shall be given to that officer, department or agency prior to the time it presents the claim of the delinquent to the State Controller.

History.—Stats. 1978, Ch. 827, effective January 1, 1979, substituted “first-class” for “registered”. Stats. 2006, Ch. 538 (SB 1852), in effect January 1, 2007, added “or her” after “to be paid by him”, substituted “if” for “in the event” after “paid by him or her or”, added “or her” and substituted “that” for “which” after “has been made against him”, added “any” after “belonging to the delinquent, or”, substituted “that” for “which” after “determination has been made”, substituted “that” for “such” after “debts to the delinquent or” in the first sentence; and substituted “that” for “such” after “the notice shall be given to”, added a comma after “department” in last sentence.

41121. **Duty to hold credits, other personal property, and debts.** After receiving the notice the person so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires the earlier.

41122. **Duty to advise board; notice to bank.** All persons so notified shall forthwith after receipt of the notice advise the board of all such credits,

other personal property, or debts in their possession, under their control, or owing by them. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice to be effective shall state the amount, interest and penalty due from the person and shall be delivered or mailed to the branch or office of such bank at which such deposit is carried or at which such credits or personal property is held. Notwithstanding any other provision, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of two times the amount, interest and penalty due from the person.

41123. **Liability for transfer.** If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld hereunder, to the extent of the value of the property or the amount of the debts thus transferred or paid he shall be liable to the state for any indebtedness due under this part from the person with respect to whose obligation the notice was given if solely by reason of such transfer or disposition the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

Text of section operative through June 30, 2001

41123.5. **Notice of levy.** (a) The board may, by notice of levy served personally or by first-class mail, require all persons, other than a service supplier, having in their possession, or under their control, any credits or other personal property belonging to a service user or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any surcharge, interest, or penalties due from the service user or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate.

(b) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

(c) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

History.—Added by Stats. 1982, Ch. 1589, in effect January 1, 1983. Stats. 1993, Ch. 1113, in effect January 1, 1994, added "(a)"; added comma after "The board may"; deleted a comma after "notice of levy"; substituted "these" for "such" after "withhold from"; substituted "the" for "such" after "due from", and substituted "the time" for "such times" after "board at"; in the first paragraph; added "(b)"; and added subdivision (c).

Text of section operative July 1, 2001

41123.5. **Notice of levy.** (a) The board may, by notice of levy served personally or by first-class mail, require all persons, other than a service supplier, having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a service user or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any surcharge, interest, or penalties due from the service user or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the service user or other person liable for the surcharge.

(3) Any other payments or credits due or becoming due the service user or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the service user and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Added by Stats. 1982, Ch. 1589, in effect January 1, 1983. Stats. 1993, Ch. 1113, in effect January 1, 1994, added "(a)", added comma after "The board may", deleted a comma after "notice of levy", substituted "these" for "such" after "withhold from", substituted "the" for "such" after "due from", and substituted "the time" for "such times" after "board at", in the first paragraph; added "(b)"; and added subdivision (c). Stats. 1999, Ch. 991 (SB 45), in effect January 1, 2000, but operative July 1, 2001, substituted "payments, credits other than payments," for "credits" after "their control, any" in the first sentence and added "The notice of . . . in subdivision (b)," as the second sentence of subdivision (a), deleted "In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice." as former subdivision (b), relettered former subdivision (c) as subdivision (b), and added subdivisions (c), (d), and (e).

41123.6. Employer withheld earnings. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from any person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 41123.5 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

Article 2.5. Priority and Lien of Surcharge *

§ 41124. Priority of claims.

§ 41124.1. Lien dates.

41124. **Priority of claims.** The amounts required to be paid by any person under this part together with interest and penalties shall be satisfied first in any of the following cases:

- (a) Whenever the person is insolvent.
- (b) Whenever the person makes a voluntary assignment of his or her assets.
- (c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.
- (d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

This section does not give the state a preference over any lien or security interest which was recorded or perfected prior to the time when the state records or files its lien as provided in Section 7171 of the Government Code.

The preference given to the state by this section shall be subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

41124.1. **Lien dates.** (a) If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. Such a lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are “due and payable” on the following dates:

- (1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent.
- (2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board.
- (3) For all other amounts, the date the assessment is final.

Article 3. Warrant for Collection

§ 41125. Warrants.

§ 41126. Fees, commissions, and expenses.

§ 41127. Collection of fees, commissions, and expenses.

41125. **Warrants.** At any time within five years after any person is delinquent in the payment of any amount required to be paid under this part the board or its authorized representative may issue a warrant for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and shall have the same

* Article 2.5 was added by Stats. 1982, Ch. 1589, in effect January 1, 1983.

effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy and a sale pursuant to a writ of execution.

History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal or constable” after “to any sheriff” in the second sentence.

41126. Fees, commissions, and expenses. The board shall pay the sheriff or marshal upon the completion of his or her services pursuant to a warrant, the same fees, commissions, and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal or constable” after “pay the sheriff” and added “or her” after “completion of his” and after “expenses for his” in the first sentence.

41127. Collection of fees, commissions, and expenses. The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him by virtue of the warrant or in any other manner provided in this part for the collection of the surcharge.

Article 4. Miscellaneous

§ 41127.5. Furnishing of partnership agreement.

§ 41127.6. Installment payment agreement.

§ 41127.7. Installment payment agreement; annual statement.

41127.5. Furnishing of partnership agreement. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

History.—Added by Stats. 1996, Ch. 1003, in effect January 1, 1997.

41127.6. Installment payment agreement. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and

penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 41090.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 1052 (AB 2898), effective January 1, 2001, added subdivision (e).

41127.7. Installment payment agreement; annual statement. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 41127.6 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

CHAPTER 7. ADMINISTRATION

- Article 1. Regulations, Records and Reports. §§ 41128–41132.
2. Disposition of Proceeds. §§ 41135–41142.
2.5. Violations. §§ 41143–41143.8.
3. Notices. § 41144.
4. Purpose. § 41150.
5. The California Taxpayers' Bill of Rights. §§ 41160–41176.

Uncodified Sections

1. Multiagency task force.

Article 1. Regulations, Records and Reports

- § 41128. Enforcement by board; rulings and regulations.
§ 41129. Service supplier records.
§ 41130. Examination of records and returns.
§ 41131. Access to records of P.U.C., political subdivisions and public agencies.
§ 41132. Information confidential; tax preparer.

41128. Enforcement by board; rulings and regulations. The board shall enforce the provisions of this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part. The board shall not prescribe, adopt or enforce any rule or regulation which has the effect, directly or indirectly, of altering the terms and conditions of service of a service supplier serving the general public, other than the imposition of the surcharge.

41129. Service supplier records. Every service supplier in this state shall keep such records pertaining thereto in such form as the board may require.

41130. Examination of records and returns. Upon proper notification to the service supplier, the board or its authorized representative shall have the right to inspect and audit all records and returns of the service supplier at all reasonable times.

41131. **Access to records of P.U.C., political subdivisions and public agencies.** The board shall have full access to records of the Public Utilities Commission, and any political subdivision or public agency of this state that regulates, operates or owns a public utility, which pertain to the furnishing of telephone communication services in this state.

41132. **Information confidential; tax preparer.** (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 4 (commencing with Section 41050), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

Article 2. Disposition of Proceeds

§ 41135. State Emergency Telephone Number Account.

§ 41136. Disposition of funds.

§ 41136.1. Funds held in trust for future appropriation.

§ 41137. Payments to suppliers.

§ 41137.1. Payments to local agencies.

§ 41138. Conditions for payment.

§ 41139. Date of commencing payments.

§ 41140. Payment for previous costs.

§ 41141. Claims for payment.

§ 41142. Failure of Legislature to appropriate funds.

41135. **State Emergency Telephone Number Account.** All amounts required to be paid to the state under this part shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the State Treasurer to be deposited in the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund, which is hereby created.

41136. **Disposition of funds.** Funds in the State Emergency Telephone Number Account shall, when appropriated by the Legislature, be spent solely for the following purposes:

(a) A minimum of one-half of 1 percent of the charges for intrastate telephone communications services and VoIP service to which the surcharge applies as follows:

➤(1) To pay refunds authorized by this part.

➤(2) To pay the State Board of Equalization for the cost of the administration of this part.

(3) To pay the office of the State Chief Information Officer for its costs in administration of the “911” emergency telephone number system.

(4) To pay bills submitted to the office of the State Chief Information Officer by service suppliers or communications equipment companies for the installation of, and ongoing expenses for, the following communications services supplied to local agencies in connection with the “911” emergency phone number system:

(A) A basic system.

(B) A basic system with telephone central office identification.

(C) A system employing automatic call routing.

(D) Approved incremental costs.

(5) To pay claims of local agencies for approved incremental costs, not previously compensated for by another governmental agency.

(6) To pay claims of local agencies for incremental costs and amounts, not previously compensated for by another governmental agency, incurred prior to the effective date of this part, for the installation and ongoing expenses for the following communication services supplied in connection with the “911” emergency phone number system:

(A) A basic system.

(B) A basic system with telephone central office identification.

(C) A system employing automatic call routing.

(D) Approved incremental costs. Incremental costs shall not be allowed unless the costs are concurred in by the office of the State Chief Information Officer.

(b)(1) For the purposes of paragraph (5) of subdivision (a), the term incremental costs shall include a maximum of one-quarter of 1 percent of the charges for intrastate telephone communications services and VoIP service to which the surcharge applies for a one-time payment to Primary Public Safety Answering Points for the cost necessary to recruit and train additional personnel necessary to accept wireless enhanced “911” calls from within their jurisdiction routed directly to their call centers.

(2) Funds allocated pursuant to this subdivision shall supplement, and not supplant, existing funding for these services.

(3) This subdivision shall remain in effect only until December 31, 2011.

History.—Stats. 1994, Ch. 146, in effect January 1, 1995, added “expenses for the following” after “installation and ongoing” in subdivision (d); substituted “Incremental costs shall ... unless costs are” for “Such incremental costs shall not be allowed unless such costs are recommended by the advisory committee and” in subparagraph (f)(4). Stats. 1997, Ch. 887 (AB 1198), in effect October 12, 1997, added subdivision (g). Stats. 1998, Ch. 485 (AB 2803), in effect January 1, 1999, substituted “Division of Telecommunications” for “Telecommunications Division” following “To pay the” in subdivision (g). Stats. 1999, Ch. 83 (SB 966), in effect January 1, 2000, added “of,” after “for the installation”, added a comma after “ongoing expenses for”, and added “to” after “communications services supplied” in subdivision (d) and substituted “Division of Telecommunications of the Department of General Services” for “Communications Division” in paragraph (4) of subdivision (h). Stats. 2009, Ch. 489 (AB 912), in effect January 1, 2010, added “A minimum of one-half of 1 percent of the charges ... surcharge applies as follows:” after “, when appropriated by the Legislature, ... for the following purposes:” to the new subdivision (a); redesignated former subdivisions (a), (b), (c), and (d) as paragraphs (a)(1), (a)(2), (a)(3), and (a)(4), respectively; redesignated former paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) as subparagraphs (a)(4)(A), (a)(4)(B), (a)(4)(C), and (a)(4)(D), respectively; redesignated former subdivisions (e) and (f) as paragraphs (a)(5) and (a)(6), respectively; redesignated former paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) as (a)(6)(A), (a)(6)(B), (a)(6)(C), and (a)(6)(D), respectively; added new subdivision (b); deleted former subdivision (g); and substituted “office of the State Chief Information Officer” for “Department of General Services” throughout the entire section.

EMERGENCY TELEPHONE USERS SURCHARGE LAW 7920.1
2010-1

Note.—Sec. 1, Stats. 2009, Ch. 489 (AB 912) provided the following Legislative findings and declarations:

(a) The Warren-911-Emergency Assistance Act establishes the number “911” as the primary emergency telephone number of use in this state.

(b) The Emergency Telephone Users Surcharge Act generally imposes a surcharge on amounts paid by every person in the state for intrastate telephone service and is imposed at a percentage rate range, established in 1980, of between one-half of 1 percent and three-quarters of 1 percent. This surcharge is annually estimated to provide revenues to fund “911” emergency telephone system costs for the current fiscal year. The rate range has remained unchanged since 1980.

(c) In 2005, there were over five million “911” calls, over eight million “911” calls in 2006, and an estimated 12 million “911” calls in 2007. This represents a 119 percent increase in “911” calls over those past two years alone. The Department of the California Highway Patrol, a Public Safety Answering Point, receives approximately 750,000 “911” calls monthly at its 24 answering points statewide.

(d) This rapid increase has made it difficult for Public Safety Answering Points, including the Department of the California Highway Patrol, to meet the 10-second answering guideline recommended by the National Emergency Number Association and accepted by the industry, potentially affecting the safety and well-being of “911” callers.

(e) “911” call volumes continue to grow and additional personnel with the appropriate training and skills, including language skills, is needed to meet the 10-second answering guideline.

41136.1. Funds held in trust for future appropriation. For each fiscal year, moneys in the State Emergency Telephone Number Account not appropriated for a purpose specified in Section 41136 shall be held in trust for future appropriation for upcoming, planned “911” emergency telephone number projects that have been approved by the Department of General Services, even if the projects have not yet commenced.

History.—Added by Stats. 2006, Ch. 73 (SB 1597), in effect January 1, 2007.

41137. Payments to suppliers. The Department of General Services shall pay, from funds appropriated from the State Emergency Telephone Number Account by the Legislature, as provided in Section 41138, bills

7920.2 EMERGENCY TELEPHONE USERS SURCHARGE LAW
2010-1

submitted by service suppliers or communications equipment companies for the installation and ongoing costs of the following communication services provided local agencies by service suppliers in connection with the “911” emergency telephone number system:

- (a) A basic system.
- (b) A basic system with telephone central office identification.
- (c) A system employing automatic call routing.
- (d) Approved incremental costs that have been concurred in by the Communications Division.

History.—Stats. 1994, Ch. 146, in effect January 1, 1995, substituted “that have been” for “which have been recommended by the advisory committee and” in subdivision (d).

41137.1. Payments to local agencies. The Department of General Services shall pay, from funds appropriated from the State Emergency Telephone Number Account by the Legislature, as provided in Section 41138, claims submitted by local agencies for approved incremental costs and for the cost of preparation of final plans submitted to the Communications Division for approval on or before October 1, 1978, as provided in Section 53115 of the Government Code.

History.—Stats. 1978, Ch. 352, effective July 4, 1978, added language following “incremental costs”.

41138. Conditions for payment. (a) It is the intent of the Legislature that the reimbursement rates for “911” emergency telephone number equipment shall not exceed specified amounts negotiated with each interested supplier and approved by the department. The department shall negotiate supplier pricing to ensure cost effectiveness and the best value for the “911” emergency telephone number system. The department shall pay those bills as provided in Section 41137 only under the following conditions:

(1) The department shall have received the local agency’s “911” emergency telephone number system plan by July 1 of the prior fiscal year and approved the plan by October 1 of the prior fiscal year.

(2) The Legislature has appropriated in the Budget Bill an amount sufficient to pay those bills.

(3) The department has reviewed and approved each line item of a request for funding to ensure the necessity of the proposed equipment or services and eligibility for reimbursement.

(4) The amounts to be paid do not exceed the pricing submitted by the supplier and approved by the department. Extraordinary circumstances may warrant spending in excess of the established rate, but shall be preapproved by the department. In determining the reimbursement rate, the department shall utilize the approved pricing submitted by the supplier providing the equipment or service.

(b) Nothing in this section shall be construed to limit an agency’s ability to select a supplier or procure telecommunications equipment as long as the supplier’s pricing is preapproved by the department. Agencies shall be

encouraged to procure equipment on a competitive basis. Any amount in excess of the pricing approved by the department shall not be reimbursed.

History.—Stats. 1996, Ch. 746, in effect January 1, 1997, added subdivision letter (a), added “It is the intent . . . by the department.” as the first sentence of, and substituted “negotiate supplier pricing . . . shall pay those” for “pay such” in the second sentence of, subdivision (a), substituted “agency’s” for “agencies” after “received the local” and substituted “the” for “such” after “year and approved” in paragraph (1) of, substituted “those” for “such” after “sufficient to pay” in paragraph (2) of, substituted “department has reviewed . . . eligibility for reimbursement” for “amounts to be paid shall not exceed the contract or established tariff rates for the costs of telephone equipment” in paragraph (3) of, substituted “do not exceed . . . equipment or service.” for “shall not exceed approved incremental costs.” in paragraph (4) of, subdivision (a), and added subdivision (b).

41139. Date of commencing payments. From funds appropriated by the Legislature from the Emergency Telephone Number Account, the department shall begin paying such bills as provided in Sections 41137, 41137.1, and 41138 in the 1977-78 fiscal year for plans submitted by local agencies by July 1, 1976 to the department which the department has approved.

41140. Payment for previous costs. The Department of General Services shall reimburse local agencies, from funds appropriated from the Emergency Telephone Number Account by the Legislature, for amounts not previously compensated for by another governmental agency, which have been paid by such agencies for approved incremental costs or to service suppliers or communication equipment companies for the following communications services supplied in connection with the “911” emergency phone number, provided such local agency plans had been approved by the department:

- (1) A basic system.
- (2) A basic system with telephone central office identification.
- (3) A system employing automatic call routing.
- (4) Approved incremental costs.

41141. Claims for payment. Claims for reimbursement shall be submitted by local agencies to the Communications Division in the Department of General Services, which shall determine payment eligibility and shall reduce the claim for charges which exceed the approved incremental costs, approved contract amounts, or the established tariff rates for such costs. No claim shall be paid until funds are appropriated by the Legislature.

History.—Stats. 1980, Ch. 1035, operative January 1, 1981, substituted present wording of first sentence following “agencies” for former wording and deleted former second sentence.

41142. Failure of Legislature to appropriate funds. Notwithstanding any other provision of this article, if the Legislature fails to appropriate an amount sufficient to pay bills submitted to the Department of General Services by service suppliers or communications equipment companies for the installation and ongoing communications services supplied local agencies in connection with the “911” emergency phone number system, and to pay claims of local agencies which, prior to the effective date of this part, paid amounts to service suppliers or communications equipment companies for the installation and ongoing

expenses in connection with the “911” emergency phone number system, the obligation of service suppliers and local agencies to provide “911” emergency telephone service shall terminate and such service shall not again be required until the Legislature has appropriated an amount sufficient to pay such bills or claims. Nothing in this part shall preclude local agencies from purchasing or acquiring any communication equipment from companies other than the telephone service suppliers.

Article 2.5. Violations *

§ 41143. Penalty.

§ 41143.4. Felony provisions.

§ 41143.8. Prosecution.

41143. Penalty. Any person who fails or refuses to file a return or report required to be made or who fails or refuses to furnish a supplemental report or other data required by the board, or who renders a false or fraudulent report is guilty of a misdemeanor and may be punished by a fine not exceeding five hundred dollars (\$500) for each offense.

41143.4. Felony provisions. Notwithstanding any other provision of this part, any person who violates this part with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars (\$25,000) or more in any 12-consecutive-month period. The determination shall be approved by the executive director or his or her designee. Each offense shall be punished by a fine of not less than five thousand dollars (\$5,000) and not more than twenty thousand dollars (\$20,000), or imprisonment for 16 months, two years, or three years, or by both the fine and imprisonment in the discretion of the court.

History.—Added by Stats. 1987, Ch. 1064, effective January 1, 1988. Stats. 1989, Ch. 654, in effect January 1, 1990, substituted “Deputy Director, Business Taxes,” for “administrator of the excise taxes” and “designee” for “supervisor”. Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “any person who violates this part” for “any violation of this part by any person” after “of this part,” in the first sentence, and substituted “executive director or his or her” for “Deputy Director, Business Taxes, or that person’s” after “approved by the” and added “by” after “three years, or” in the second sentence.

41143.8. Prosecution. Any prosecution for violation of any of the penal provisions of this part shall be instituted within three years after commission of the offense or within two years after the violation is discovered, whichever is later.

Note.—Sec. 41. Stats. 1986, Ch. 1361 required that:

(a) On January 15 of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41. applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

* Article 2.5 was added by Stats. 1986, Ch. 1361, effective January 1, 1987.

Article 3. Notices

§ 41144. Notices.

41144. **Notices.** A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing of personal service in accordance with any requirement of this part for the giving of notice. Unless otherwise specifically required, any notice required by this part to be mailed or served may be given by mailing or personal service in the manner provided for giving notice of a deficiency determination.

Article 4. Purpose

§ 41150. Purpose.

§ 41152. Legislative intent.

41150. **Purpose.** The Legislature hereby declares and finds that to enable public agencies to implement “911” emergency phone systems required by the provisions of Chapter 1005 of the 1972 Regular Session (Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code) it is necessary that a surcharge be imposed upon amounts paid by every person in the state for intrastate telephone communication services in this state. This bill will provide funding for basic 911, basic 911 (including telephone central office identification) 911 with selective routing or a combination of the above. These services will include incoming 911 lines/trunks, 911 answering positions including common control equipment, transfer lines and transfer positions. In addition, this part will provide funding for incremental costs.

41152. **Legislative intent.** The Legislature finds and declares all of the following:

(a) Access to emergency telephone service has been a longstanding goal of the state.

(b) The Emergency Telephone Users Surcharge Act remains an important means for making emergency telephone service available to every person in this state.

(c) Every reasonable means should be employed by telephone corporations and every provider of telephone quality communication to ensure that every person using their service is informed of and is afforded the opportunity to use emergency telephone service, regardless of the means by which emergency telephone calls are placed.

(d) The furnishing of emergency telephone service is in the public interest and should be supported fairly and equitably by every telephone corporation and every provider of telephone quality communication in a way that is equitable, nondiscriminatory, and competitively neutral.

Article 5. The California Taxpayers' Bill of Rights *

- § 41160. Administration.
- § 41161. Taxpayers' Rights Advocate.
- § 41162. Education and information program.
- § 41163. Annual hearing for taxpayer proposals.
- § 41164. Preparation of statements by board.
- § 41165. Limit on uses of revenue collected or assessed.
- § 41166. Evaluation of employee's contact with taxpayers.
- § 41167. Plan to timely resolve claims and petitions.
- § 41168. Procedures relating to review conferences.
- § 41169. Reimbursement to taxpayer.
- § 41170. Investigation for nontax administration purposes.
- § 41171. Settlement of disputed tax liabilities. [Repealed.]
- § 41171.5. Offers in compromise.
- § 41171. Settlement authority.
- § 41172. Release of levy.
- § 41172.5. Return of property.
- § 41173. Exemptions from levy.
- § 41174. Claim for reimbursement of bank charges by taxpayer.
- § 41175. Preliminary notice to taxpayer prior to lien.
- § 41176. Disregard by board employee or officer.

41160. **Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

41161. **Taxpayers' Rights Advocate.** (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

41162. **Education and information program.** (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

* Added by Stats. 1992, Ch. 438, in effect January 1, 1993.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or the Controller.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “and compliance” after “program for audit” in paragraph (4) of subdivision (b).

41163. Annual hearing for taxpayer proposals. The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Emergency Telephone Users Surcharge Law which may further improve voluntary compliance and the relationship between taxpayers and government.

41164. Preparation of statements by board. The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

41165. Limit on uses of revenue collected or assessed. (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

41166. Evaluation of employee’s contact with taxpayers. The board shall develop and implement a program that will evaluate an individual employee’s or officer’s performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers’ Rights Advocate.

41167. Plan to timely resolve claims and petitions. The board shall, in cooperation with the Taxpayers’ Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

41168. **Procedures relating to review conferences.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

(a) Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

(b) The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

41169. **Reimbursement to taxpayer.** (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “board” for “State Board of Control” after “expenses with the” in paragraph (1) of, substituted “decides” for “makes a recommendation to the State Board of Control” after “The board” in paragraph (3) of, and deleted paragraph (4) which read: “The State Board of Control concurs with the recommendation and orders the board to provide reimbursement of fees and expenses to the taxpayer.” from, subdivision (a); and added subdivision (d). Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “within one year of the date the decision of the board becomes final” after “with the board” in paragraph (1) of, and substituted “in an amount determined by the board in its sole discretion” for “which shall be determined by the board” after “to the hearing,” in paragraph (3) of, subdivision (a), substituted “board staff has . . . was substantially justified” for “taxpayer has established that the position of the board staff was not substantially justified” after “consider whether the” in subdivision (b), and added subdivision (e).

41170. **Investigation for nontax administration purposes.** (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include emergency telephone users surcharge violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

41171. **Settlement of disputed tax liabilities.** [Repealed by Stats. 1995, Ch. 497, in effect January 1, 1996.]

41171. **Settlement authority.** (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to surcharge matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph 3 and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any surcharge matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil surcharge matter in dispute involving a reduction of surcharge or penalties in settlement, the total of which reduction

of surcharge and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of surcharge, or penalties, or total surcharge and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the surcharge payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the surcharge payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of surcharge matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

7930 EMERGENCY TELEPHONE USERS SURCHARGE LAW
2009-1

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to surcharge matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

History.—Added by Stats. 1995, Ch. 497, in effect January 1, 1996. Stats. 2003, Ch. 605 (SB 1060), in effect January 1, 2004, added “, for at least one year,” after “placed on file” to subdivision (c). Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007, substituted “Except as provided in paragraph (3) and subject” for “Subject” before “to paragraph (2)” in paragraph (1) of, added “, itself,” after “submitted to the board” in the first and third sentences of paragraph (2) of, and added paragraph (3) to subdivision (b); added “, or penalties, or total surcharge and penalties” after “a reduction of surcharge” in the first paragraph of, and substituted “For any settlement approved by the board, itself, the” for “The” before “Attorney General’s conclusion” in the first sentence of paragraph (5) of subdivision (c); and added “, itself,” after “disapproved by the board” in the second sentence of paragraph (1) of subdivision (e).

Text of section in effect January 1, 2007 through December 31, 2012

41171.5. **Offers in compromise.** (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final surcharge liability where the reduction of surcharges is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final surcharge liability involving a reduction in surcharges in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final surcharge liability in which the reduction of surcharges is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final surcharge liability” means any final surcharge liability arising under Part 20 (commencing with Section 41001), or related interest, additions to surcharges, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the surcharge payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final surcharge liability may be compromised regardless of whether the business has been discontinued or transferred or whether the surcharge payer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final surcharge liability shall also apply to a qualified final surcharge liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a “qualified final surcharge liability” means either of the following:

(A) That part of a final surcharge liability, including related interest, additions to surcharge, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the service supplier collected the surcharge from the service user or other person and which was determined against the service supplier under Article 3 (commencing with Section 41070), Article 4 (commencing with Section 41080), or Article 5 (commencing with Section 41085) of Chapter 4.

(B) That part of a final surcharge liability, including related interest, additions to surcharge, penalties, or other amounts assessed under this part, determined under Article 3 (commencing with Section 41070), Article 4 (commencing with Section 41080), and Article 5 (commencing with Section 41085) of Chapter 4 against a service user who is a consumer that is not required to register with the board under Article 3 (commencing with section 41040) of Chapter 2.

(3) A qualified final surcharge liability may not be compromised with any of the following:

(A) A surcharge payer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the surcharge payer is making the offer.

(B) A business that was transferred by a surcharge payer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the surcharge payer’s liability was previously compromised.

(C) A business in which a surcharge payer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the surcharge payer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the surcharge payer’s liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement which permits the surcharge payer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that such installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A surcharge payer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the surcharge payer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A surcharge payer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required emergency telephone users surcharge returns for a five-year period from the date the liability is compromised, or until the surcharge payer is no longer required to file emergency telephone users surcharge returns, whichever period is earlier.

(h) Offers in compromise shall not be considered where the surcharge payer has been convicted of felony tax evasion under this part during the liability period.

(i) For amounts to be compromised under this section, the following conditions shall exist:

(1) The surcharge payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the surcharge payer's present assets or income.

(B) The surcharge payer does not have reasonable prospects of acquiring increased income or assets that would enable the surcharge payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(j) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final surcharge liability shall not be subject to administrative appeal or judicial review.

(k) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid surcharge and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the surcharge payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to

partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the surcharge payer.

▲(l) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the surcharge payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the surcharge payer.

▲(m) When more than one surcharge payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, surcharge payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable surcharge payer shall reduce the amount of the liability of the other surcharge payers by the amount of the accepted offer.

▲(n) Whenever a compromise of surcharges or penalties or total surcharges and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

- (1) The name of the surcharge payer.
- (2) The amount of unpaid surcharges and related penalties, additions to surcharges, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state. The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the surcharge payer or violate the confidentiality provisions of Section 41131. No list shall be prepared and no releases distributed by the board in connection with these statements.

▲(o) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any surcharge payer or other person liable for the surcharge.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the surcharge payer or other person liable for the surcharge.

(2) The surcharge payer fails to comply with any of the terms and conditions relative to the offer.

▲(p) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement,

willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a surcharge payer or other person liable in respect of the surcharge.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the surcharge payer or other person liable in respect of the surcharge.

(q) For purposes of this section, “person” means the surcharge payer, any member of the surcharge payer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the surcharge payer, or any other corporation or entity owned or controlled by the surcharge payer, directly or indirectly, or that owns or controls the surcharge payer, directly or indirectly.

(r) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

History.—Added by Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007. Stats. 2008, Ch. 222 (AB 2047), in effect January 1, 2009, redesignated former subdivision “(c)” to be “(c)(1)” and added paragraphs (2) and (3) in subdivision (c); added subdivisions (d), (e), (f), and (g); relettered former subdivisions (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) as (h), (i), (j), (k), (l), (m), (n), (o), (p), and (q), respectively; and added subdivision (r).

Text of section operative January 1, 2013

41171.5. Offers in compromise. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final surcharge liability where the reduction of surcharges is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final surcharge liability involving a reduction in surcharges in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final surcharge liability in which the reduction of surcharges is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final surcharge liability” means any final surcharge liability arising under Part 20 (commencing with Section 41001), or related interest, additions to surcharges, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where

the surcharge payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the surcharge payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The surcharge payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the surcharge payer's present assets or income.

(B) The surcharge payer does not have reasonable prospects of acquiring increased income or assets that would enable the surcharge payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final surcharge liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid surcharge and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the surcharge payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the surcharge payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the surcharge payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the surcharge payer.

(i) When more than one surcharge payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, surcharge payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable surcharge payer shall reduce the amount of the liability of the other surcharge payers by the amount of the accepted offer.

(j) Whenever a compromise of surcharges or penalties or total surcharges and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director

of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the surcharge payer.

(2) The amount of unpaid surcharges and related penalties, additions to surcharges, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state. The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the surcharge payer or violate the confidentiality provisions of Section 41131. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any surcharge payer or other person liable for the surcharge.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the surcharge payer or other person liable for the surcharge.

(2) The surcharge payer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a surcharge payer or other person liable in respect of the surcharge.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the surcharge payer or other person liable in respect of the surcharge.

(m) For purposes of this section, "person" means the surcharge payer, any member of the surcharge payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the

surcharge payer, or any other corporation or entity owned or controlled by the surcharge payer, directly or indirectly, or that owns or controls the surcharge payer, directly or indirectly.

(n) This section shall become operative on January 1, 2013.

History.—Added by Stats. 2008, Ch. 222 (AB 2047), in effect January 1, 2009, operative January 1, 2013.

41172. **Release of levy.** (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to one thousand five hundred dollars (\$1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added "of Division 2" after "(commencing with Section 703.010)" and added "Part 2 of" after "Title 9 of" in subdivision (b). Stats. 1995, Ch. 555, in effect January 1, 1996, substituted "that the" for "of any of the following: (1) The" after "in the event" in subdivision (a); substituted subdivision letter "(b)" for paragraph number "(2)" and substituted "may order the . . . of moneys received" for "orders the release of the levy or notice to withhold" after "Taxpayers' Rights Advocate" in subdivision (b); and relettered former subdivisions (b) and (c) as (c) and (d), respectively.

41172.5. **Return of property.** (a) If any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 41127.5 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 41174.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

41173. **Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added "of Division 2" after "(commencing with Section 703.010)" and added "Part 2 of" after "Title 9 of".

41174. Claim for reimbursement of bank charges by taxpayer. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

History.—Stats. 2001, Ch. 543 (SB 1185), added “and any other . . . check charge fees” after “of bank charges” in subdivision (a), added “and third party” prior to “charges include a” in subdivision (a), added “or third party’s” after “a financial institution’s” in subdivision (a), added “or third party” after “the financial institution” in subdivision (a), effective January 1, 2002.

41175. Preliminary notice to taxpayer prior to lien. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(c) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(d) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added subdivision (d).

41176. Disregard by board employee or officer. (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff that contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivisions (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

History.—Stats. 2006, Ch. 538 (SB 1852), in effect January 1, 2007, substituted "that" for "which" after "on the part of the plaintiff" in subdivision (c).

Uncodified Sections

§ 1. Multiagency task force.

1. **Multiagency task force.** (a) The multiagency task force established pursuant to Executive Order D-51-86 (hereinafter referred to as “task force”) shall include among its goals and objectives the following:

(1) To deter tax evasion by maximizing recoveries from blatant tax evaders and violators of cash-pay reporting laws, utilizing all penalties which are available to the taxing and enforcement agencies under existing law.

(2) To reduce enforcement costs by eliminating duplicative audits and investigations.

(3) To generate greater voluntary taxpayer compliance and to deter tax and cash-pay violations by publicizing the efforts of the task force.

(4) To provide opportunities for auditors and investigators from tax and enforcement agencies to become familiar with other agencies’ laws and enforcement procedures.

(5) To concentrate its efforts in investigating and prosecuting violations of cash-pay and tax laws by employers with five or more employees and by individuals who are habitual or willfull violators of those laws.

(b) In addition to the responsibilities cited in Executive Order D-51-86, the task force shall be empowered to do all of the following:

(1) Identify areas of blatant violations and noncompliance with tax and cash-pay laws.

(2) Solicit referrals from the tax and enforcement agencies represented on the task force committee of instances of blatant violations and noncompliance with tax and cash-pay laws.

(3) Conduct audits, investigations, and referrals for prosecution of violations referred by other agencies and in the identified areas of violations and noncompliance, using all enforcement powers available in existing laws and regulations.

(4) Establish an advertised telephone “hotline” for referrals from the public.

(5) Publicize the activities of the task force.

(6) Keep the audit and investigative staff of the tax and enforcement agencies represented on the task force committee fully informed of the activities of the task force.

(7) Develop procedures for improved information sharing among the agencies represented on the task force committee, consistent with restrictions on disclosure of confidential tax information in existing law, for the purpose of improving enforcement.

(8) Based on the activities of the task force, evaluate the need for any law changes to do any of the following:

(A) Eliminate barriers to interagency information sharing.

(B) Improve agencies’ ability to audit, investigate, and prosecute tax and cash-pay violations.

(C) Deter violations and improve voluntary compliance.

(D) Eliminate duplication and improve cooperation among the participating agencies.

(c) The task force shall report to the Governor, the Senate and Assembly Revenue and Taxation Committees, and the Commission on California State Government Organization and Economy every six months during the period it is in existence, beginning on March 1, 1987, regarding the activities of the task force. The reports shall include, but not be limited to, all of the following:

(1) The number of cases of blatant violations and noncompliance with tax and cash-pay laws identified, audited or investigated, and referred for prosecution.

(2) Actions taken by the task force to publicize its activities.

(3) Efforts made by the task force to establish an advertised telephone “hotline” for referrals from the public.

(4) Procedures developed for improved information sharing among the agencies represented on the task force.

(5) Steps taken by the task force to improve cooperation among participating agencies, reduce duplication of effort, and improve voluntary compliance.

(6) Recommendations for any law changes needed to accomplish the goals described in paragraph (8) of subdivision (b).

History.—Added by Sec. 40, Stats. 1986, Ch. 1361, effective January 1, 1987.

7942 EMERGENCY TELEPHONE USERS SURCHARGE LAW
2009-1

INDEX

A

Adjustment of surcharge rate
 determination of rate . . . 41030
 determination time . . . 41031
 publication of rate . . . 41032
Administration
Access to records . . . 41131
 enforcement . . . 41128
 examination of records and returns . . . 41130
 service supplier . . . 41129
Authorization . . . 41014

C

Cancellation of illegal determinations . . . 41107
Certificate of delinquency . . . 41118
“Charges for services” defined . . . 41011
Collection of tax
 attachment . . . 41117
 court action . . . 41115
 of fees, commissions and expenses . . . 41126, 41127
 procedure rules . . . 41116
 service of process . . . 41119
 warrant for . . . 41125
“Communications equipment company” defined . . . 41018
Compromise, offers in . . . 41171.5
Confidential information, tax preparer . . . 41132

D

Definitions . . . 41002–41018
Determination
 deficiency . . . 41070
 failure to file . . . 41080
 liability . . . 41071, 41082
 limitations . . . 41076, 41077
 notice of . . . 41075, 41078, 41084
 offsets . . . 41072, 41081
 penalty . . . 41073, 41074, 41080, 41083
 service of notice . . . 41091
Determination of rate . . . 41030–41032
Disposition of proceeds
 claims for payment . . . 41141
 conditions for payment . . . 41138
 date of commencing payments . . . 41139
 failure of Legislature to appropriate funds . . . 41142
 funds held in trust for future appropriation . . . 41136.1
 of funds . . . 41136
 payment for previous costs . . . 41140
 payments to local agencies . . . 41137.1
 payments to suppliers . . . 41137
 state Emergency Telephone Number Account . . . 41135

E

Electronic filing . . . 41063
Electronic fund transfer payments
 definitions . . . 41060, 41062
 relief of penalty . . . 41061
Erroneous refunds . . . 41114.1
Exemption . . . 41019
Extensions . . . 41046, 41054

I

Imposition of surcharge
 billing . . . 41025
 collection . . . 41021
 constitutional exemptions . . . 41027

7944 EMERGENCY TELEPHONE USERS SURCHARGE LAW
2009–1

I (Contd.)

debts owed . . . 41023
liability . . . 41024
rate . . . 41020
rounding of payments . . . 41026
statement . . . 41022
“In this state” defined . . . 41005
Installment payment agreement . . . 41127.6
Installment payment agreement, annual statement . . . 41127.7
Interest and penalties . . . 41095
 disallowance . . . 41106
 excusable delay . . . 41096
 overpayment . . . 41105
 relief from interest . . . 41097
 relief of spouse . . . 41099
“Intrastate telephone communication services” defined . . . 41010

J

Judgment
 assignee . . . 41114
 disposition . . . 41112
 interest . . . 41113

L

Legislative intent . . . 41019.5, 41152
Legislative purpose . . . 41150
“Local telephone service” defined . . . 41015

M

“Month” defined . . . 41008
Multiagency task force . . . 1

N

Notices
 determination . . . 41075–41077
 employer withheld earnings . . . 41123.6
 notice of withhold . . . 41120–41123
 notices . . . 41144
 service of notice . . . 41091

O

Offers in compromise . . . 41171.5

P

Payments
 claims for . . . 41141
 commencing date of . . . 41139
 conditions of . . . 41138
 for previous costs . . . 41140
 Legislature failure to appropriate funds . . . 41142
 to Board . . . 41055
 to local agencies . . . 41137.1
 to suppliers . . . 41137
“Person” defined . . . 41003
“Private communication service” defined . . . 41017
“Public agency” defined . . . 41006
“Public telephone” defined . . . 41012
Purpose . . . 41150

R

Records . . . 41056
Redeterminations
 finality date . . . 41089
 increase or decrease of determination . . . 41088
 oral hearing . . . 41087
 penalty . . . 41090
 petition for . . . 41085
 petition form, content and amendment . . . 41086
 service of notice . . . 41091

R (Contd.)

Refunds, claim for
 claim limitation period, financially disabled . . . 41101.1
 contents of claim . . . 41102
 credits and refunds . . . 41100
 disallowance of interest . . . 41106
 failure to file . . . 41103
 financially disabled . . . 41101.1
 interest on overpayment . . . 41105
 limitations . . . 41101
 notice of action . . . 41104
 overpayment from levies or liens . . . 41101.2
Refunds, suit for
 disposition of judgment . . . 41112
 enjoining collection . . . 41108
 interest . . . 41113
 judgment for assignee . . . 41114
 limitations . . . 41110
 necessity of claim . . . 41109
 no action . . . 41111
 recovery of erroneous amounts . . . 41114.1
Registration . . . 41040
Relief from tax, penalty and interest . . . 41098
Relief for innocent spouse . . . 41099
Report to the Legislature . . . 41143–41143.8
Returns . . . 41053
 due . . . 41052
 electronic filing . . . 41063

S

Security requirement . . . 41041
“Service supplier” defined . . . 41007
“Service user” defined . . . 41009
Settlement authority . . . 41171
Special provisions and exemptions
 board ruling . . . 41049
 charges exempt under Federal Law . . . 41046
 presume bill is correct . . . 41045
Spouse, innocent . . . 41099
“Surcharge” defined . . . 41013
 surcharge due . . . 41050
 surcharge payable . . . 41051

T

Taxpayers’ Bill of Rights . . . 41160–41176
Title of law . . . 41001
“Toll telephone service” defined . . . 41016

V

Violations
 felony provisions . . . 40187
 penalty . . . 41143.4
 prosecution for . . . 41143.8
“VoIP service” defined . . . 41016.5

W

Withhold, notice of
 advise Board . . . 41122
 duty to hold credits, personal property and debts . . . 41121
 liability for transfer . . . 41123
 notice to bank . . . 41122
 notice to holders and debtors . . . 41120

7946 EMERGENCY TELEPHONE USERS SURCHARGE LAW
2009-1